

774
No. 2183

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,
Libelant and Appellant,

vs.

THE STEAMSHIP "INDIANAPO-
LIS," her engines, boilers, tackle, ap-
parel and furniture,
Respondent and Appellee.

INTERNATIONAL STEAMSHIP
COMPANY, a corporation,
Claimant and Cross-Libelant.

APOSTLES ON APPEAL

Upon Appeal from the United States District Court
for the Western District of Washington,
Northern Division.

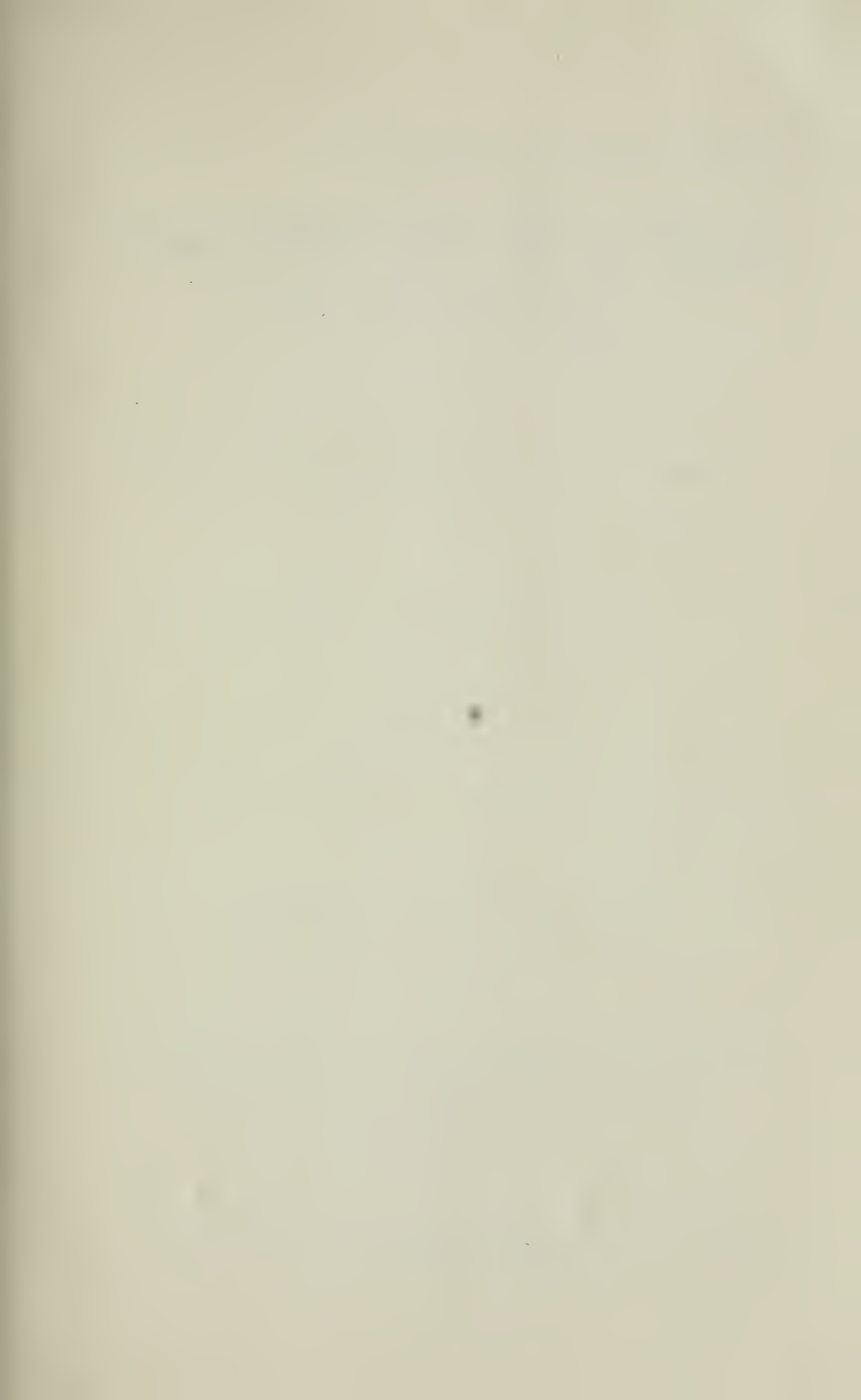
Lowman & Hanford Co., Seattle

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Court of appeals

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*In the District Court of the United States for the Western
District of Washington, Northern Division.*

KITSAP COUNTY TRANSPORTA- TION COMPANY, a corporation, <i>Libelant and Appellant,</i> <i>vs.</i> THE STEAMSHIP "INDIANAPO- LIS," her engines, boilers, tackle, ap- parel and furniture, <i>Respondent and Appellee.</i> INTERNATIONAL STEAMSHIP COMPANY, a corporation, <i>Claimant and Cross-Libelant.</i>	}	No. 4484.
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NAMES AND ADDRESSES OF COUNSEL.

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Proctor for Libelant and Appellant.

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Proctor for Respondent and Appellee and Claimant and
Cross-Libelant.

*In the United States District Court for the Western District
of Washington, Northern Division. In Admiralty.*

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,

Libelant,

vs.

The Steamship "INDIANAPOLIS,"
her engines, boilers, tackle, apparel
and furniture,

Respondent,

INTERNATIONAL STEAMSHIP
COMPANY, a corporation,

Claimant and Cross-Libelant.

No. 4484.

STATEMENT.

Time of commencement of suit:

January 6, 1911.

Names of Parties:

Kitsap County Transportation Company, a corporation,
Libelant; International Steamship Company, a corporation,
Claimant and Cross-Libelant.

Dates when pleadings were filed:

Libel—January 6, 1911.

Cross-Libel—February 7, 1911.

Answer to Cross-Libel—March 1, 1911.

Answer to Libel—April 29, 1911.

Issuance of Process and service thereof:

On January 6, 1911, upon the filing of the Libel herein,
monition and attachment was duly issued out of and under
the seal of the said Court and delivered to the United States
Marshal for the Western District of Washington; said moni-
tion was by said Marshal, on the 9th day of January, 1911,
returned into said Clerk's office, showing by said Marshal's

return thereon endorsed, the attachment of the steamship "Indianapolis" on January 7, 1911, and the release of said steamship on January 7, 1911, upon a stipulation signed by said International Steamship Company, Claimant, as principal, and Joshua Green and Charles E. Peabody as sureties.

On February 15, 1911, after the filing of the cross-libel herein, a monition and attachment was duly issued out of and under the seal of said Court and delivered to the United States Marshal for the Western District of Washington; said monition and attachment was by said Marshal on the 17th day of February, 1911, returned into said Clerk's office showing by the Marshal's return thereon endorsed, the attachment of the steamship "Kitsap" on February 17, 1911, and the release of said steamship on February 17, 1911, upon a stipulation signed by said libelant as principal and W. L. Gazzam as surety.

Reference to Commissioner:

On March 7, 1911, the said Court duly made and filed an order of reference of said cause to A. C. Bowman, United States Commissioner, to take and report the testimony in said cause; and on October 20, 1911, said Commissioner duly returned said testimony into Court, and the same was on said day filed in the office of the Clerk thereof.

TRIAL.

On November 8, 1911, said cause came duly on for trial and hearing before Honorable C. H. Hanford, one of the Judges of said Court, upon the testimony so taken before said Commissioner and returned and filed in court, together with the exhibits offered in evidence by the respective parties, which were also returned by said Commissioner and filed in said Court. Proctors for the respective parties appeared and argued said cause in open Court, and thereafter submitted written briefs to the said Court. Thereafter and on May 28, 1912, said Judge, before whom said cause was tried and heard, duly filed his memorandum decision on the merits in said cause.

DECREE.

Final Decree in accordance with such memorandum decision on the merits was filed August 15th, 1912, the same being signed by Honorable Edward E. Cushman, one of the Judges of said Court; the Honorable C. H. Hanford having resigned as a Judge of said Court before the entry of such decree and after the filing of said memorandum decision.

NOTICE OF APPEAL.

Notice of Appeal, also Petition for Appeal, were filed August 15, 1912, and an order allowing such appeal made and filed on the same day.

Endorsed: STATEMENT. Filed in the U. S. District Court, Western Dist. of Washington, Aug. 15, 1912. A. W. Engle, Clerk. By F. A. Simpkins, Deputy.

In the District Court of the United States, for the Western District of Washington, Northern Division. In Admiralty.

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,

Libelant,

vs.

THE STEAMSHIP "INDIANAPOLIS," her engines, boilers, tackle, apparel and furniture,

Respondent.

No. 4484.

LIBEL.

The libel and complaint of KITSAP COUNTY TRANSPORTATION COMPANY, a corporation organized, created and existing under and by virtue of the laws of the State of Washington, against the Steamship "Indianapolis," her engines, boilers, tackle, apparel and furniture, and against

all persons lawfully intervening for their interest in the same, in a cause of collision, civil and maritime, alleges as follows:

I.

That at all times hereinafter mentioned, the above named Libelant was, ever since has been, and still is, a corporation duly organized, created and existing under and by virtue of the laws of the State of Washington; that during all the times hereinafter mentioned said Libelant was the owner of that certain steam vessel called the "Kitsap," with her steam engines, boilers, tackle, apparel and furniture, which said vessel was used and employed in transporting passengers and freight between the City of Seattle, State of Washington, and other ports and places upon the waters of Puget Sound and its tributaries.

II.

That said Steamship "Kitsap" was a wooden vessel of the following registered tonnage: 195 gross tons, and 123 net tons; she was 127.5 feet in length over all, and had a beam of 22 feet, and a depth of 7.5 feet, and at the time of the collision hereinafter mentioned, said vessel was stout, staunch, and in all respects well manned, tackled, appareled and appointed, and had the usual and necessary complement of officers and men.

III.

The Steamship "Indianapolis" is, and at all times hereinafter mentioned was, an iron or steel American vessel of about 180 feet in length, and was engaged in transporting freight and passengers between the City of Seattle, Washington, and the City of Tacoma, Washington, and her master was and is one Howard Penfield.

IV.

On Wednesday, the 14th day of December, 1910, at about 4:35 o'clock P. M., the said Steamer "Kitsap" left her berth at the south side of Pier 4, in the City of Seattle, Washington, upon her regular voyage or run from Seattle to Liberty

Bay; a dense fog then hung over Elliott Bay and the course of the Steamer therein. She backed from her said berth at a point about opposite Pier 5, and then went ahead under slow bell, with helm hard a-starboard, turning to her course to Four Mile Rock; her master was at her wheel in the pilot house, and her mate was on the bridge; a competent man was on the lookout, and they, as well as the rest of the crew, who were variously employed in their respective duties, were faithfully attending thereto. The vessel proceeded under slow bell, regularly sounding her fog signal as required by the Regulations for avoiding collisions, up to the time of the collision hereinafter mentioned, and every precaution was being taken to avoid collision during said time. Shortly after turning to her said course, the fog signals of the "Indianapolis" were heard a little forward of the "Kitsap's" beam on the port side; the "Indianapolis" was then inbound from Tacoma to the Colman Dock in Seattle; the "Kitsap," at all times after the Indianapolis" fog signals were so heard on the "Kitsap," was a considerable distance northerly from the proper and regular course of the "Indianapolis" from the bell-buoy off Duwamish Head to Colman Dock. The "Kitsap" proceeded on her said course at a speed of not over three or four miles an hour, regularly sounding her fog whistle, and all hands keeping a sharp lookout, and taking every precaution against collision, until it appeared that the "Indianapolis" was getting closer, when the engines of the "Kitsap" were stopped and alarm signals immediately sounded; under these circumstances and conditions the "Indianapolis" suddenly appeared through the fog a short distance from the "Kitsap" and on her port side, coming at a high rate of speed and heading for the port side of the "Kitsap."

The master of the "Kitsap" at once ordered his engines full speed astern, which checked all forward movement of the "Kitsap," but before she could gather sternway, the "Indianapolis," without changing her course or checking her speed to any apparent extent, struck the "Kitsap" on the port side just back of the pilot house, cutting into the

hull of the "Kitsap" several feet; the "Indianapolis" backed away from the "Kitsap," and then put her bow against the "Kitsap" just forward of the cut, and all the passengers and crew of the "Kitsap" were transferred to the "Indianapolis." Shortly thereafter the "Kitsap" sank by reason of the injuries received in such collision, and became and is a total loss.

V.

The Libelant alleges that the collision was in no way due to any fault on the part of the "Kitsap," which was carefully operated, nor of her officers or crew, but was due wholly to fault on the part of the "Indianapolis," in that she was navigated at too great speed in the fog, close to the docks in a crowded harbor, where it was known to those in charge of the "Indianapolis" that vessels were leaving the docks at all times; in that she did not give proper heed to the fog signals of the "Kitsap"; in that she did not go under the stern of the "Kitsap," as under the collision rules she should have done; in that she did not stop and reverse her engines in time, as she should have done; and in that she was in other respects improperly and carelessly navigated.

VI.

The Libelant further alleges that by reason of the said collision, it has suffered damage in the loss of the said Steamer "Kitsap," with her stores and munitions and her cargo and freight, and on account of the expense arising out of said collision, in a sum amounting to upwards of Fifty Thousand Dollars (\$50,000.00).

VII.

That said Steamer "Indianapolis" is now lying in the port of Seattle, and within the jurisdiction of this court.

VIII.

That all and singular the premises are true.

WHEREFORE, Libelant prays that process in due form of law and according to the practice of this Honorable Court,

may issue against the said Steamship "Indianapolis," her engines, boilers, tackle, apparel and furniture, and that she may be condemned and sold to answer for the damages alleged in this libel; and that this court will hear the evidence which the Libelant will adduce in support of the allegations of the libel, and will enter a decree in favor of the Libelant for the above mentioned damages, and will order the same to be paid and satisfied out of the said proceeds of the said Steamship "Indianapolis," together with interest and the costs of the Libelant, and will otherwise right and justice administer in the premises.

BOGLE, MERRITT & BOGLE,
Proctors for Libelant,
610 Central Building,
Seattle, Washington.

State of Washington,
County of King. ss.
Western District of Washington.

W. L. GAZZAM, being duly sworn on oath, says: That he is the president of the KITSAP COUNTY TRANSPORTATION COMPANY, the Libelant above named; that he has read the foregoing Libel and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

W. L. GAZZAM.

Subscribed and sworn to before me this 5th day of January, A. D. 1911.

(Notarial Seal)

F. T. MERRITT,
Notary Public in and for the State of
Washington, residing at Seattle.

Endorsed: LIBEL. Filed in the U. S. District Court, Western Dist. of Washington. Jan. 6, 1911. R. M. Hopkins, Clerk.

*In the District Court of the United States for the Western
District of Washington. Northern Division.*

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,

Libelant,

vs.

THE STEAMSHIP "INDIANAPO-
LIS," her engines, boilers, tackle, ap-
parel and furniture,

Respondent.

No. 4484.

CROSS-LIBEL.

The cross-libel of International Steamship Company, a corporation, owner of the steamship "Indianapolis," against the steamship "Kitsap," her engines, boilers, tackle, apparel and furniture, and against all parties lawfully intervening for their interest, in a cause of collision, civil and maritime, alleges as follows:

I.

That at all times hereinafter mentioned the above named cross-libelant was, and still is, a corporation created and organized under and by virtue of the laws of the State of Oregon and duly licensed to do business within the State of Washington; that during all the times hereinafter mentioned said cross-libelant was the owner of the steamship "Indianapolis," an American vessel, with her engines, boilers, tackle, apparel and furniture, which said vessel was used and employed in transporting passengers and freight between the City of Seattle, Washington, and the City of Tacoma, Washington.

II.

That said steamship "Indianapolis" was at the time of the collision hereinafter mentioned stout, staunch, and in all respects well manned, tackled, appareled and appointed and had the usual and necessary complement of officers and men.

III.

That said steamer "Kitsap" is an American vessel regularly engaged in transporting passengers and freight between Seattle and other ports on Puget Sound.

IV.

That on Wednesday, the 14th day of December, 1910, the said steamer "Indianapolis" left her berth at Tacoma at 3:00 P. M., on her regular trip to the City of Seattle, running in clear weather until near Duwamish buoy; that near that locality said steamer sighted a slight fog, whereupon she reduced her speed, increasing it momentarily as the fog lifted, but almost immediately reducing it upon sighting a second fog bank ahead; that said steamer entered said fog bank under a slow bell, and regularly sounding her fog signals as required by law; that her master was at her wheel, her mate upon the bridge, and a competent man was upon the lookout, and that each and all were faithfully attending to their respective duties at all times herein mentioned. That soon after entering said second fog bank the master of the steamer Indianapolis heard the whistles of the Kitsap at a distance off the port bow; that shortly after he heard said whistles nearly ahead but still a considerable distance away, whereupon he caused the engines of the Indianapolis to be stopped. That subsequently he heard the Kitsap's whistles to starboard, upon which he ordered half speed astern, and upon again hearing said whistle and apparently growing nearer ordered full speed astern. That almost immediately, sighting the Kitsap through the fog, said master of the Indianapolis blew alarm whistles and used all reasonable methods to avoid collision, notwithstanding which a collision took place, resulting in injury to the said Indianapolis and in the sinking of the Kitsap.

V.

The cross-libelant alleges that said collision and resultant damage was in nowise due to the fault of the Indianapolis, which was carefully and prudently managed, and upon her usual and proper course to her dock, nor to any fault of

her officers or crew, but was wholly due to the fault of the Kitsap in that she was navigating at too great speed in the fog; in that she did not give proper heed to the signals of the Indianapolis, and more particularly in that, although those in charge of the said Kitsap knew that the Indianapolis was coming up to her dock in a dense fog, said Kitsap was nevertheless navigated upon a course which would twice carry her between the Indianapolis and said dock, that is, it should twice take said Kitsap across the bows of said Indianapolis.

VI.

Cross-libelant further alleges that by reason of said collision it has suffered damage to the said Indianapolis in the sum of Fifty Thousand Dollars.

VII.

That said steamer Kitsap has been raised and is lying upon the beach at West Seattle and is within the jurisdiction of this Court.

VIII.

That all and singular the premises are true.

WHEREFORE, cross-libelant prays that process in due form of law and according to the practice of this Honorable Court, may issue against the said steamship Kitsap, her engines, boilers, tackle, apparel and furniture, and that she may be condemned and sold to answer for the damages alleged in this libel; and that this Court will hear the evidence which the libelant will adduce in support of the allegations of the cross-libel, and will enter a decree in favor of the cross-libelant for the above mentioned damages, and will order the same to be paid and satisfied out of the said proceeds of the said steamship Indianapolis, together with interest and the costs of the libelant, and will otherwise right and justice administer in the premises.

IRA BRONSON,
Proctor for Cross-Libelant.

United States of America,
State of Washington,
County of King.—ss.

Joshua Green, being first duly sworn, on oath says that he is the president of the International Steamship Company, a corporation, cross-libelant herein; that he has read the foregoing cross-libel, knows the contents thereof and believes the same to be true.

JOSHUA GREEN,

Subscribed and sworn to before me this 6th day of February, 1911.

(Seal)

ROBERT W. REID,

Notary Public in and for the State of
Washington, residing at Seattle.

Endorsed: CROSS-LIBEL. Filed in the U. S. District Court, Western Dist. of Washington. Feb. 7, 1910. R. M. Hopkins, Clerk.

In the District Court of the United States, for the Western District of Washington, Northern Division. In Admiralty.

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,

Libelant,

vs.

THE STEAMSHIP "INDIANAPOLIS," her engines, boilers, tackle, apparel and furniture,

Respondent,

INTERNATIONAL STEAMSHIP
COMPANY,

Cross-Libelant.

No. 4484.

ANSWER.

To the District Court of the United States, for the Western District of Washington:

The answer of KITSAP COUNTY TRANSPORTATION COMPANY, a corporation, owner of the Steamship

"Kitsap," her engines, boilers, tackle, apparel and furniture, and the libellant in the above entitled cause, to the cross-libel of the INTERNATIONAL STEAMSHIP COMPANY, a corporation, herein, denies as follows:

I.

Denies any knowledge or information thereof sufficient to form a belief as to any allegation, matter, statement or thing contained in Article IV of said cross libel.

II.

Denies each and every allegation, matter, statement and thing contained in Articles V and VI of said cross libel.

WHEREFORE this libellant prays that the Court would be pleased to pronounce against the cross libel aforesaid, and give judgment in favor of said libellant as prayed for in its libel herein, with its costs, and otherwise right and justice be administered in the premises.

BOGLE, MERRITT & BOGLE,
Proctors for Libellant.

United States of America,
Western District of Washington—ss.

W. L. GAZZAM, being first duly sworn, on oath says: That he is President of the Kitsap County Transportation Company, a corporation, libellant in the foregoing entitled cause and makes this verification in its behalf; that he has read the foregoing answer to cross libel, knows the contents thereof, and believes the same to be true.

W. L. GAZZAM.

Subscribed and sworn to before me this 27th day of February, 1911.

(Seal)

F. T. MERRITT,
Notary Public in and for the State of
Washington, residing at Seattle.

Service of within Answer this 28th day of Feby. 1911 and receipt of a copy thereof, admitted.

IRA BRONSON,
Proctor for Respondent and Cross-Libellant.

Endorsed: ANSWER TO CROSS LIBEL of INTERNATIONAL STEAMSHIP CO. Filed in the U. S. District Court, Western Dist. of Washington. March 1, 1911. R. M. Hopkins, Clerk.

In the District Court of the United States for the Western District of Washington.

KITSAP COUNTY TRANSPORTA- TION COMPANY, a corporation,	}	<i>Libelant,</i>
<i>vs.</i>		
The STEAMSHIP INDIANAPOLIS, her engines, boilers, tackle, apparel and furniture,		<i>Respondent,</i>
INTERNATIONAL STEAMSHIP COMPANY, a corporation,		<i>Claimant.</i>

ANSWER OF LIBEL.

The answer of The International Steamship Company, a corporation, to the libel and complaint of the Kitsap County Transportation Company, a corporation, against the steamer "INDIANAPOLIS", her engines, boilers, tackle, apparel and furniture, in a cause of collision, civil and maritime, alleges as follows:

I.

That this respondent is a corporation, duly organized, existing and doing business under and by virtue of the laws of the State of Oregon and is duly authorized to transact business in the State of Washington. That at all of the time in the said libel mentioned, this respondent was and ever since has been the sole owner of the steamship Indianapolis, her engines, boilers, tackle, apparel, and furniture.

II.

That as to the allegation in paragraph two of said libel that the steamer "KITSAP", at the time of her collision aforesaid was stout, staunch and in all respects well manned, tackled, appareled and appointed, this respondent is not sufficiently informed as to the truth or falsity of said allegation and therefore denies the truth thereof.

III.

That as to the allegations contained in paragraph four of said libel this respondent denies that the steamer Kitsap was proceeding under slow bell regularly sounding her fog signals as required by the Regulations for avoiding collision and that every precaution was being taken to avoid collision; and denies that the Indianapolis was a considerable distance northerly from her proper and regular course and denies that the Kitsap proceeded on her regular course at the speed of not over three or four miles an hour regularly sounding her fog whistle and all hands keeping a sharp lookout and taking every precaution against collision; and denies that her engines were stopped as therein alleged; and denies that the Indianapolis was coming at a high rate of speed; and denies that the Kitsap ordered her engines full speed astern which checked all forward movement of the Kitsap, and denies that the Indianapolis without changing her course or checking her speed to any apparent extent stuck the Kitsap on the port side; and denies that the Kitsap became and is a total loss; And as to each and every other allegation contained in said paragraph, this respondent is not sufficiently informed as to the truth or falsity thereof, and therefore denies the same, except that this respondent admits that the steamer Kitsap and the steamer Indianapolis, on the 14th day of December, 1910, at about 4:39 or 4:40 o'clock, P. M. while a dense fog hung over Elliott Bay, came into collision, and that shortly thereafter the Kitsap sank by reason of such collision.

IV.

That as to paragraph five of said libel this respondent denies each and every allegation, matter and thing therein

contained; and particularly denies that the collision was in no way due to any fault on the part of the Kitsap and that the Kitsap was carefully operated; and particularly denies that it was due to fault on the part of the Indianapolis of any kind whatsoever.

V.

That as to paragraph six of said libel this defendant denies each and every allegation therein contained.

VI.

That all and singular the premises are true.

WHEREAS, this respondent prays that the original libel herein may be dismissed with costs and for such other and further relief and redress as in law and justice this claimant and respondent is entitled to receive.

INTERNATIONAL STEAMSHIP COMPANY,

By JOSHUA GREEN,

President.

IRA BRONSON,

Proctor for Respondent.

United States of America,
State of Washington,
County of King—ss.

Joshua Green, being first duly sworn according to law, deposes and says; that he is the President of the International Steamship Company, a corporation, claimant and respondent in the above entitled cause; that he has read the foregoing answer, knows the contents thereof and believes the same to be true.

JOSHUA GREEN.

Subscribed and sworn to before me this 22d day of April, 1911.

(Seal)

ROBERT W. REID,
Notary Public in and for the State of
Washington, residing at Seattle.

The service of a copy hereof admitted this 27th day of April, 1911.

BOGLE, MERRITT & BOGLE,
Proctors for Libelant.

Endorsed: ANSWER OF LIBEL. FILED in the U. S. District Court, Western Dist. of Washington. Apr. 29, 1911. R. M. Hopkins, Clerk.

*In the District Court of the United States for the Western
District of Washington, Northern Division.
In Admiralty.*

KITSAP COUNTY TRANSPORTA- TION COMPANY, a corporation, <i>Libelant,</i>	}	No. 4484. CLAIM.
<i>vs.</i>		
THE STEAMSHIP "INDIANAPO- LIS," her engines, boilers, tackle, ap- parel and furniture, <i>Respondent.</i>		

And now, Kitsap County Transportation Company, owner of the Steamship "Kitsap," her engines, boilers, tackle, apparel and furniture, intervening for its own interest in the said Steamship Kitsap, etc., appears before this Honorable Court, and makes claim to the said Steamship, her engines, etc., as the same are attached by the Marshal under process of this Court at the instance of the International Steamship Company, and the said Kitsap County Transportation Company avers that it was in possession of said Steamship at the time of the attachment thereof and that it is the true and bona fide owner of said Steamship and that no other person is the owner thereof.

WHEREOF it prays to be admitted to defend accordingly.

KITSAP COUNTY TRANSPORTATION COMPANY,
By W. L. GAZZAM,
Its President.

United States of America,
Western District of Washington—ss.

W. L. Gazzam, being first duly sworn, on oath says: That he is the President of the Kitsap County Transportation Company, claimant above named; that he has read the foregoing claim, knows the contents thereof, and that he believes the same to be true.

W. L. GAZZAM.

Subscribed and sworn to before me this 17th day of February, 1911.

(Seal)

F. T. MERRITT,
Notary Public in and for the State of
Washington, residing at Seattle.

Endorsed: CLAIM. Filed in the U. S. District Court, Western Dist. of Washington. Feb. 17, 1911. R. M. Hopkins, Clerk.

*In the District Court of the United States for the Western
District of Washington, Northern Division.*

KITSAP COUNTY TRANSPORTA- TION COMPANY, a corporation, <i>Libelant,</i>	}
<i>vs.</i>	
STEAMSHIP "INDIANAPOLIS," her tackle, apparel, etc., <i>Respondent,</i>	
INTERNATIONAL STEAMSHIP COMPANY, a corporation, <i>Claimant.</i>	

CLAIM BY PRESIDENT OF OWNER.

To the Honorable C. H. Hanford, Judge of the District Court of the United States for the Western District of Washington, Northern Division:

Now comes Joshua Green, and respectfully states and represents that he is the President of the International Steamship Company, a corporation duly created and existing under and by virtue of the laws of the State of Oregon, and duly authorized to do business in the State of Washington, with its principal office and place of business in the city of Seattle, King County, Washington; that said corporation is the sole owner of the steamship "Indianapolis," her engines, boilers, machinery, sails, boats, tackel, apparel and furniture, and that no other corporation or person has any interest therein as owner. And the said Joshua Green, as such president, claims the said steamship and property in behalf of the said corporation, and prays that the same may be delivered to him for said owner.

JOSHUA GREEN,
For the International Steamship Company.

United States of America,
State of Washington,
County of King—ss.

Joshua Green, being duly sworn on his oath, says that the facts stated in the foregoing claim subscribed by him are true.

JOSHUA GREEN.

Subscribed in my presence and sworn to before me this 6th day of January, 1911, by the said Joshua Green.

(Seal)

ROBERT W. REID,

Notary Public in and for the State of
Washington, residing at Seattle.

Endorsed: CLAIM BY PRESIDENT OF OWNER.
Filed in the U. S. District Court, Western Dist. of Washington. Jan. 7, 1911. R. M. Hopkins, Clerk.

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*In the District Court of the United States for the Western
District of Washington, Northern Division.*

KITSAP COUNTY TRANSPORTA- TION COMPANY, a corporation, <i>Libelant,</i>	}	No. 4484.
<i>vs.</i>		
THE STEAMSHIP "INDIANAPO- LIS", etc., <i>Respondent,</i>		
INTERNATIONAL STEAMSHIP COMPANY, <i>Cross-libelant and Claimant.</i>		

TESTIMONY REPORTED BY U. S. COMMISSIONER.

To the Honorable Judges of the above entitled court:

Pursuant to the order of reference in the foregoing entitled cause, on this 10th day of March, 1911, the libelant appeared before me by its agents, and by Mr. Merritt, of Bogle, Merritt & Bogle, its proctors, and the Claimant and Cross-libelant, appeared by its agents and by Mr. Ira Bronson, its Proctor; thereupon the following testimony was offered and proceedings had:

LIBELANT'S TESTIMONY:

Capt. H. A. HANSON, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). Captain, were you the master of the steamship Kitsap on December 14th, 1910?

A. Yes sir.

Q. What papers did you hold at that time?

A. Master's license.

Q. How long have you held a master's license?

A. Eight or nine years.

Q. How long had you been master of the Kitsap?

A. Three or four months this last time.

Q. How long had you been master of her prior to that time?

A. Oh, different times; master of her for eight or ten months sometimes; the company has had her about five years.

Q. What run was she on on December 14th 1910?

A. Seattle and Paulsbo run.

Q. Where was her berth in Seattle?

A. Pier four.

Q. How long had she been berthed at pier 4?

A. Two or three months.

Q. Which side of the pier was her ordinary berth?

A. The north side.

Q. The Kitsap was a wooden vessel, was she?

A. Yes sir.

Q. Do you know about her dimensions?

A. Yes sir.

Q. About what were they?

A. Her length was 135 feet.

Q. What other dimensions?

A. Her beam is 22 feet and her draft was 6½ feet.

Q. Forward or aft?

A. Aft.

Q. What was her forward draft?

A. About three feet.

Q. What crew did she have on December 14th, 1910?

A. Eleven of a crew.

Q. Eleven?

A. Yes sir.

Q. State whether or not that was the full crew required by her certificate of inspection and license?

A. Well, she carried more than her certificate called for. She carried one or two sailors more.

Q. Did she carry all of the officers which her certificate called for?

A. Yes sir.

Q. Engineers and deck crew?

A. Yes sir.

Q. Who was her mate?

A. Mr. Welfare.

Q. Who was her chief engineer?

A. Mr. Hanson.

Q. How many trips each day was the Kitsap making between Seattle and Paulsbo up to the 14th of December, 1910?

A. She made two trips a day with the exception of her lay-day.

Q. What was her lay-day?

A. Wednesdays.

Q. How many trips did she make on her lay-day- if any?

A. Wednesday?

Q. That is does she lay over all day?

A. Yes, she makes one round trip.

Q. Had she been making these two trips during the time you had been master of her this time?

A. Yes sir.

Q. Now, do you remember the 14th of December, 1910?

A. Yes sir.

Q. In the afternoon?

A. Yes sir.

Q. What time did you first leave pier 4 with the Kitsap on the Paulsbo run on December 14th, 1910, in the afternoon?

A. A few minutes after four.

Q. How was the weather at that time?

A. Very foggy.

Q. Any wind?

A. No sir.

Q. You say very foggy?

A. Yes sir.

Q. How foggy, how far could you see, about, through the fog?

A. Well, that is hard to say. We could see across to pier five.

Q. That is when you were lying on which side of pier 4?

A. On the north side.

Q. When you were lying on the north side of pier 4?

A. Yes sir.

Q. Where did you go when you left the dock?

A. We backed up in front of pier 5.

Q. Where did you go at that time?

A. Came ahead, and a few minutes later we had a collision with the launch Columbia.

Q. What did you do after the collision, where did you go with her?

A. Went back to pier 4.

Q. Which side of pier 4 did you tie up, after coming back from the collision with the launch?

A. South side.

Q. Were there any other boats near you when you tied up at the south side of pier 4?

A. Yes sir, the Reliance.

Q. Where was she lying?

A. At the end of pier 4.

Q. How long did you stay on the south side of pier 4, at this time?

A. A few minutes.

Q. Well, about how many, can you tell?

A. Oh, probably three or four.

Q. Do you know when you left there?

A. Yes sir.

Q. When?

A. 4:35.

Q. Where did you go then?

A. Backed out in front of pier 5.

Q. How did you back out?

A. We backed on a starboard helm.

Q. Out by the Reliance?

A. Yes sir.

Q. You say you backed out in front of pier 5?

A. Yes sir.

Q. How do you know you backed out there?

A. There was a ship lying on the south side of pier 5.

Q. Had you seen that ship there before?

A. Yes sir.

Q. Then what did you do after you backed in front of pier 5?

A. Came ahead on her.

Q. How did you come ahead?

A. Came ahead on a port helm.

Q. What bells did you give, or signals did you give to come ahead on?

A. Gave a stop bell and a go-ahead bell.

Q. What bell did you give for a go-ahead bell?

A. One.

Q. How did you put your helm then as she came ahead?

A. Hard aport.

Q. Did she come ahead fast or slow?

A. Slow.

Q. Have you noticed, captain, in coming out from pier 4 and making this turn on to your course for Paulsbo, how far south the Kitsap would go before she would turn on her course?

A. I do not understand.

Q. I say in making this turn as you come out from pier 4 I understand you backed out in front of pier 5, as you usually do?

A. Yer sir.

Q. Except you backed out from the south side instead of the north side of the pier. How far do you ordinarily back in coming out from the north side of the pier, how far back do you go?

A. In front of pier five?

Q. In the same place you did this time?

A. Yes sir.

Q. Then did you go ahead with the helm hard aport the same as you did this time?

A. Yes sir.

Q. Now in doing that, how far south will the Kitsap go in making this turn, at slow speed?

A. At slow speed?

Q. Yes.

A. To the north corner of the Grand Trunk.

Q. To the north corner of the Grand Trunk dock?

A. Yes sir.

Q. Does she ever go south of the Grand Trunk dock?

A. No sir.

Q. Have you noticed her course in making that turn, before this time, how far she would go?

A. Yes sir.

Q. Could you tell how fast the Kitsap's engines were working, approximately how fast she was working, as she went ahead under this bell you say you gave?

A. Yes sir.

Q. About how fast?

A. Four or five miles an hour.

Q. How was the weather at this time?

A. Very foggy.

Q. I will ask you whether it was banks of fog raising or lowering, or what was the condition of the fog?

A. Heavy, thick fog.

Q. Did you hear the whistles of any other boats at any time?

A. I heard the Telegraph whistle.

Q. When was that?

A. When I was backing out.

Q. Did you hear the whistles of any other boats after that?

A. No sir.

Q. At any time?

A. No sir.

Q. Did you hear the whistles of the Indianapolis?

A. Yes, after we came around.

Q. After you came around?

A. Yes sir.

Q. When you say came around, what do you mean by "Come around"?

A. Came around on our course.

A. After you came around on your course?

A. Yes sir.

Q. What was your course?

A. West by south quarter south.

Q. To what point did you lay your course or for what point?

A. Oh, for four mile rock.

Q. That is out this side of West point?

A. Yes sir.

Q. You say after you came around on your course you heard the Indianapolis?

A. Yes sir.

Q. Did you hear the Indianapolis before that time?

A. No sir.

Q. Where were you as you came out from the dock and came around on your course?

A. In the pilot house?

Q. Who had charge of the wheel?

A. I did.

Q. Where was the mate?

A. In front of the pilot house?

Q. Was anybody on the lookout?

A. Yes sir.

Q. Who?

A. Mr. Tongerose.

Q. Anybody else out there?

A. Yes sir, passengers.

Q. Any of the other crew?

A. Yes sir.

Q. Who?

A. Another lookout man.

Q. Now when you first heard the whistle of the Indianapolis, from what quarter did you hear it or what direction from the Kitsap did you hear it?

A. The port side.

Q. The port side?

A. The port bow.

Q. About how many points off the port bow?

A. I should judge three or four.

Q. Do you remember hearing the Indianapolis on your starboard bow?

A. No sir.

Q. Did you hear the Indianapolis' fog whistle again?

A. Yes sir.

Q. When, how long afterwards?

A. A few seconds.

Q. What, if anything, did you do with the Kitsap after you heard the Indianapolis' fog whistles?

A. After we heard about three whistles we stopped.

Q. What bell did you give to stop?

A. One gong.

Q. Do you know whether that was answered by the engineer?

A. Yes sir.

Q. And then what did you do?

A. We were drifting for 10 or 15 seconds.

Q. Then what did you do?

A. Gave backing bells.

Q. What bells did you give to back?

A. Two bells and a jingle.

Q. Do you know whether the engineer answered that signal?

A. Yes sir.

Q. Then what happened?

A. A few seconds later the Indianapolis loomed up.

Q. Where did she loom up?

A. On the port bow.

Q. What part of the Indianapolis did you see first?

A. Her hull.

Q. How was she coming?

A. Coming headed about for the pilot house.

Q. Of the Kitsap?

A. Yes sir.

Q. What did you do?

A. I jumped out of the pilot house on the starboard side.

Q. What occurred then?

A. Crashed into us, just a little aft of my pilot house door.

Q. Do you know how the Kitsap was running at the time of the collision, at the time the Indianapolis struck her?

A. I should judge from the time that she was backing that we were dead still.

Q. Could you tell how the Indianapolis was going at the time or between the time you saw her, and the collision?

A. Well, I cannot tell exactly the speed she had, but she had a very good speed on.

Q. About how far away was the Indianapolis when you first saw her?

A. Oh, I should judge 75 or 100 feet.

Q. About how long was it between the time you first saw the Indianapolis and when she first struck the Kitsap?

A. A few seconds.

Q. What was the effect on the Kitsap of the Indianapolis striking her?

A. She listed a little to starboard.

Q. Well, what else, if anything, did it do to the Kitsap?

A. Made a big hole in her.

Q. About how much of a hole?

A. Cut into her clear up alongside the pilot house, eight or nine feet into the boat.

Q. Then what happened?

A. She filled.

Q. The Kitsap?

A. The Kitsap, yes.

Q. What did the Indianapolis do?

A. They came back and took us off.

Q. How did she come back, where did she come back?

A. She brought her nose back to the guard of the Kitsap and transferred us on to the bow of the Indianapolis.

Q. About how long did that take after she came back with her nose against the Kitsap to transfer the passengers?

A. Oh, I should judge about five or six minutes.

Q. Was she holding her nose against the Kitsap during this time?

A. Yes sir.

Q. You got all the passengers off, did you?

A. Yes sir.

Q. What was done after that, what happened after you got the passengers off?

A. Well, after we all got on, we backed away.

Q. Did the crew leave the Kitsap?

A. Yes sir.

Q. The Indianapolis backed away?

A. Yes sir.

Q. Then what happened?

A. I went up and told the captain that the wreck was still floating, and asked if he would put a line on and try to tow her to shallow water.

Q. Did he do that?

A. Yes sir.

Q. Did he tow her to shallow water?

A. No, he put a line on and she settled and went down out of sight a few minutes afterwards.

Q. She sank?

A. Yes sir.

Q. About how long did she float after the collision?

A. After we all got aboard?

Q. How long did she float after you got aboard?

A. Probably two or three minutes.

Q. You think she settled within two or three minutes?

A. Her stern settled. It was longer than that before she got out of sight.

Q. How long after you got aboard before she went out of sight?

A. Oh, probably four or five minutes. It is hard to say exactly. It might have been more. Of course they had to lower a boat and it took a little time.

Q. Who lowered a boat?

A. The Indianapolis.

Q. Was that done after you got aboard?

A. Yes sir.

Q. They lowered a boat.

A. Yes sir.

Q. What did the boat do?

A. They took the headline off the Kitsap and put it on the Indianapolis.

Q. And it was after that that she sank?

A. Yes sir.

Q. Now I will ask you whether or not from the time you backed away from pier 4, on the south side, until the collision, the Kitsap was sounding any fog signals?

A. Yes sir.

Q. What signals was she sounding?

A. Fog whistles.

Q. How often?

A. Oh, probably every 15 seconds.

Q. Do you know the ordinary course of the Indianapolis from the Bellbuoy to her berth?

A. You mean her compass course?

Q. No, about the line of the bay in which she ran.

A. Yes sir.

Q. I will ask you whether or not the course of the Kitsap in leaving pier 4 and turning on to a course to four mile rock which you have given, would cross or come in contact with the ordinary course of the Indianapolis from the Bellbuoy to her berth?

A. I do not understand you.

Q. The question is, captain, whether or not the course of the Kitsap in leaving pier 4, backing out as you have stated and turning to the course to four mile rock, such as you have given, would cross the line of the ordinary course of the Indianapolis from the Bellbuoy to her berth in Seattle?

A. No sir.

Q. Where was her berth in Seattle?

A. Colman dock.

Q. How was the tide at the time you left the dock on this trip?

A. The tide was running out.

Q. And how does it set by the end of pier 4 as it is running out, which direction?

A. The tide in running out sets toward the mudchute.

Q. That is in a northerly or northwesterly direction?

A. Yes sir.

Q. That would be in a direction in which your course lay toward Four mile rock?

A. Yes sir.

Q. Do you know about how fast the tide was running at this time?

A. Oh, I do not know; probably a mile an hour.

Q. Did you see any of the lights on the Indianapolis before the collision?

A. No sir.

Q. Afterwards?

A. Yes sir.

Q. Were the lights burning on the Kitsap at the time?

A. Yes sir.

Q. I will ask you whether or not the Kitsap was on her course at the time of the collision?

A. Yes sir.

Q. When you say she was on her course, do you mean she had completed the turn and straightened on her course?

A. Yes sir.

Q. From your experience in operating and running the Kitsap on this course, how far would you say the Kitsap was from pier 4 at the time of the collision?

A. That is hard to tell; she was quite a distance.

Q. Well, would you say she was north or south of pier 4 at the time?

A. She was north.

Q. And could you say about how far north?

A. No, I could not.

Q. And how with reference to any other pier?

A. It is hard to say exactly.

Q. When the Kitsap is run under a slow bell, and a stop bell is given, and then about 15 seconds afterwards a bell for full speed astern is given, the engines running full speed astern, about how long would it take under these circumstances, from the time the reverse bell is given, in order to check the forward motion of the Kitsap?

MR. BRONSON: I object. The hypothetical question is not based on an accurate enough statement of facts to make the answer intelligible.

A. About 15 seconds.

Q. Assuming that the Kitsap had been running under a slow bell at this time, as you have testified, and that the

engines were stopped and remained dead for 10 or 15 seconds, and then the engines were run full speed astern, about how long would you say it would require to check the forward motion of the Kitsap, under these circumstances?

A. I don't quite catch that.

Q. I say, assuming that the Kitsap had been running under a slow bell, as you have testified she was running at this time, and that the engines were stopped and remained dead for 10 or 15 seconds, and that then they were run full speed astern, how long would it take, from the time they were running full speed astern in order to check her forward movement?

A. About fifteen seconds.

Q. About what time did the collision occur?

A. Around 4:39 or 4:40.

Q. After the collision did you give any bells to the engine room?

A. Yes sir.

Q. What?

A. Stop bell and relief bell.

Q. And after that what did you do?

A. I went down on deck.

Q. You devoted your own time after that to getting the passengers and crew off?

A. Yes sir.

Q. And the passengers and crew did get aboard the Indianapolis?

A. Yes sir.

Q. And were brought into the dock?

A. Yes sir.

Q. Captain, did the Kitsap have much of a load on at this time?

A. No sir.

Q. She is an oil burner, is she?

A. Yes sir.

Q. Where are her oil tanks?

A. Forward.

Q. What was their condition at this time?

A. There was just enough oil to make that trip. The next morning was oil day.

Q. Do you know what her draft was forward, under these conditions?

A. Yes sir.

Q. What was it?

A. About three feet.

Q. When you said before, that her forward draft was three feet, you referred to this time, did you?

A. Well, it is hard to come with a few inches of it; of course when she has oil in she draws more water.

Q. How much more?

A. Probably three or four inches.

Q. Do you know what piers there are south of pier 4, between that pier and the Grand Trunk dock?

A. Yes sir.

Q. What?

A. Two.

Q. What are they?

A. One pier—you said between pier 4—

Q. And the Grand Trunk, what is there between the two?

A. One dock, pier 3.

Q. That is what is known as the Galbraith dock?

A. Yes sir.

Q. And then there is an engine house between them?

A. Yes, fire house.

Q. And then what is south of the Grand Trunk?

A. The West Seattle ferry.

Q. And then what comes next?

A. The Colman dock.

Q. About what distance is there between pier 4 and the Grand Trunk dock?

A. You mean and the north corner of pier 4?

Q. Well, take the south corner of pier 4 and the north corner of the Grand Trunk?

A. Oh, I should think it is 700 feet.

Q. And about how far from the south corner of pier 4 and the north corner of the Colman dock, about how far is it?

A. Oh, I should think about 1,000 or 1,100 feet.

Q. What experience have you had, captain, at sea, as an officer on board steam vessels?

A. My experience has been on the Sound here.

Q. You never have measured the distance, have you, captain?

A. No sir.

Q. Just estimates that you are giving?

A. Yes sir.

Q. The nine years you have been master has been on Sound vessels?

A. Yes sir.

Q. Navigating in and out of Seattle during that time?

A. Yes sir.

Q. And in fogs?

A. Yes.

Q. I will ask you whether or not, in your opinion, there was anything which you or the officers of the Kitsap could have done at this time, to have avoided this collision?

A. I do not understand you.

Q. I ask you whether or not there was anything, in your opinion or in your experience, there was anything that you and the officers of the Kitsap could have done to have avoided this collision?

A. No sir.

Q. When you heard the Indianapolis' fog whistle off your port bow, why did not you stop and back up sooner?

A. Well, we stopped after we heard two or three whistles.

Q. Why didn't you back up at that time?

A. Well, the whistles were a good ways off.

Q. Did you have any reason to think, from her whistles, that she was crossing your course?

A. No sir.

Q. Did you have any reason to think from her whistles that there was any danger of her running into the Kitsap?

A. No sir.

Q. Prior to the time when you did back up?

A. No sir.

CROSS EXAMINATION:

Q. (Mr. Bronson). Mr. Hanson, you had left pier 4 at what time, previously to the time in which the collision took place?

A. You mean the first time?

Q. Yes sir.

A. A few minutes after four.

Q. Can you tell exactly how long?

A. About a minute or so; probably two minutes.

Q. How do you arrive at that?

A. Well, because we got orders to lay a minute after time to take on passengers—to not leave any passengers.

Q. What I am getting at is this? You figured that was the time because that was ordinarily your leaving time, and not because you looked at the clock?

A. No, we always look at the clock.

Q. If you looked at the clock you know exactly how long afterwards you did leave?

A. Yes sir.

Q. And it was how long afterwards exactly?

A. About a minute.

Q. If you looked at the clock you do not need to say “about”, you can say exactly cannot you?

A. Yes, one minute.

Q. One minute. Just give me again, briefly, your course. You backed out on what helm?

A. Starboard helm.

Q. And you were on that course about how long?

A. About a minute.

Q. You backed and came back after the first time you left?

A. It took us about three minutes to get on our course.

Q. You backed out and got on your course in three minutes and how long was it after that until you were in collision with this launch?

A. About three or four minutes after we left.

Q. About three or four minutes. Where was that?

A. Out from the dock, almost to the mudchute, this side of the mudchute.

Q. Did you see the mudchute at the time?

A. No sir.

Q. How do you know then where it was?

A. Well, we were out on our course.

Q. How did you arrive at the distance, by timing your course, is that the idea?

A. Yes sir.

Q. What bell were you proceeding under?

A. Slow bell.

Q. And did you look at the clock so that you know how many minutes elapsed?

A. Yes sir.

Q. How many?

A. Three or four minutes.

Q. That is to say three or four minutes after you got on your course?

A. Yes sir.

Q. And how far did you figure that you had traveled in that time?

A. Well, we were on our course toward the mudchute. I cannot say how far I was from the mudchute; I cannot say the distance.

Q. You say you cannot say how far off you were or how far south?

A. How far north.

Q. You were north of the mudchute?

A. No. I say I do not know how far I was from the mudchute on our course.

Q. You do not know where that accident took place?

A. No, I did not say anything of that kind.

Q. Tell us as near as you can.

A. I was backing out of pier 4 and on the north side and came ahead on my course and ran three or four minutes and this launch ran across my bow and I hit her.

Q. And the only way in which you can arrive where you were relative to the mudchute, is upon the theory that

the vessel would go so far under a slow bell in three or four minutes?

A. Yes sir.

Q. You sunk this launch, didn't you, or she sunk?

A. Yes sir.

Q. And a man was lost?

A. Yes sir.

Q. And you spent sometime picking him up?

A. Yes.

Q. Was there any excitement there?

A. A little excitement among the passengers.

Q. Did it disturb your equanimity at all?

A. No sir.

Q. Did not upset your nervous condition, you do not mean anything like that?

A. No sir.

Q. You did not tell Gazzam, when you got back to the dock that you were not in condition to go out again?

A. No sir.

Q. Did you say anything of a similar character at all?

A. No sir.

Q. You are very positive about that?

A. Yes sir.

Q. You left the second time, you say, at 4:35?

A. Yes sir.

Q. Was that the exact time?

A. Yes sir.

Q. You backed out into the stream on what helm?

A. Starboard helm.

Q. And how far?

A. Corner of pier 5.

Q. You arrived at that you say by identifying a ship that was lying alongside of the dock?

A. Yes sir.

Q. Did you back slowly?

A. The same as we always do.

Q. Would that be slowly?

A. We did not give a jingle bell at the dock.

Q. Did not do that in fair weather and you would not do it in a fog, of course?

A. No sir.

Q. Does she back well?

A. Yes sir.

Q. It is not true then that she backs poorly, that she did the day she sank? She backed well then?

A. Yes she did.

Q. Did she back to port?

A. Yes sir.

Q. How long would it take you in backing out?

A. About a minute and get coming ahead again.

Q. What did you do when you go out from that dock, do you swing her right around, did you come out clear and swing her with the helm or swing her with the lines?

A. Well, we swing her with the lines if there is a heavy wind blowing.

Q. What did you do this time?

A. Backed right out.

Q. Right straight away from the dock?

A. Yes sir.

Q. Then you put her ahead under a slow bell?

A. Yes sir.

Q. Does one bell call for slow bell?

A. Yes sir.

Q. Or is that speed in the discretion of the engineer in starting ahead, does he vary that speed more or less according to conditions?

A. Well, one bell is half speed.

Q. Half speed is what you mean when you say a slow bell?

A. Yes sir.

Q. What is full speed of the Kitsap?

A. We were going very slow.

Q. I ask you what full speed of the Kitsap is?

A. Eight miles.

Q. Is that full speed?

A. Full speed is 15 miles.

Q. You say the Kitsap is about 135 feet long. What is her gross tonnage?

A. Her gross tonnage is less than 200, 190, something like that. I cannot tell exactly.

Q. About 190 tons.

A. I think so.

Q. Wooden hull vessel?

A. Yes sir.

Q. How is she, lightly built?

A. No, not so very.

Q. You would not call her heavy, would you?

A. I call her heavy built for her size.

Q. You were in the pilothouse?

A. Yes sir.

Q. What windows did you have down?

A. All of them.

Q. This was a heavy fog at the time?

A. Yes sir.

Q. Had you been in the pilothouse all the time, from the time you left on the first trip?

A. Yes sir.

Q. Why did you have these windows down, captain?

A. Well, because it is customary to have them down so that you can hear and see something in foggy weather.

Q. What has that got to do with seeing?

A. Makes a big difference.

Q. What?

A. Because the vapor gets on the windows from the heaters.

Q. And the fog is settling on it?

A. Yes sir—it is not the fog, it is the heat from the heater.

Q. Heat from the heater condensed the fog on the outside of them?

A. Yes sir.

Q. You wear glasses all the while don't you?

A. Yes sir.

Q. What is the effect in foggy weather on your glasses?

A. Nothing at all.

Q. Does not that moist them up?

A. No sir, not when the windows are down.

Q. Not when you are outdoors?

A. No sir.

Q. You knew that the Indianapolis was due at this time, didn't you?

A. No sir.

Q. How long had you been running on that run, did you say?

A. The Paulsbo run?

Q. Yes sir.

A. A good many years.

Q. Did I understand you to say that you did not know that it was about the arriving time of the Indianapolis?

A. She generally gets in about a quarter of an hour.

Q. So you did not think she was due then?

A. I did not think, no.

Q. Did not think it was necessary to look out for her?

A. We did look out for her as soon as we heard her.

Q. If it was not due for a few minutes yet, you did not think it was necessary to look out for her?

A. I did not say that.

Q. You would not expect her ahead of time in a fog, would you?

A. No sir.

Q. So that you really did not figure on looking out for her, or think that it was necessary?

A. I did not say it that way. I was looking out for all of them.

Q. Did you think it was necessary to look out for her?

A. I certainly—I looked out for her as much as any of the rest of them.

Q. I am not asking about any of the rest of them.

A. Any of the steamboats, when I hear a whistle I look out for it.

Q. I ask you whether you thought it was necessary to look out for her before you heard her whistle?

A. I cannot look out for any one when I cannot hear it.

Q. Then as I understand you, you did not think it

necessary for you to look out for the Indianapolis? What I am getting at is this, captain, what you thought was reasonable precaution on your part.

A. Well, I will say I could not look out for her if I did not hear her, until I got on my course.

Q. Then you assumed that she was astern of you, or going astern of you?

A. I thought I got clear of her.

Q. You thought her course was astern of you?

A. Yes sir.

Q. You would not have gone to work and turned a half circle in front of what you thought her course would be, when she was due coming in in the fog?

A. A half circle?

Q. You would not have made the turn you made to get on your course and make the two crossings in front of her and planned to get there, unless you thought her course was really south of where you were going, would you?

A. I do not understand what you mean.

Q. Well, are you satisfied from the facts, as they arose now that you did, whether the Indianapolis was on her course or not, we are not discussing that in this question, but you did as a matter of fact turn a half circle across her bows, you passed her bows and turned around and crossed them again?

A. I do not know whether I did or not.

Q. Don't you know that?

A. No. I made a circle that I always make.

Q. Well, you would not have done that voluntarily, would you?

A. I do not know why, I did it every day, the same thing every day.

Q. But you say you would not in a fog turned a half circle and crossed her bows twice, if you had known?

A. No sir.

Q. That would be a dangerous thing to do?

A. Yes sir.

Q. Your theory was that you were not far enough south to cross her track, is not that it?

A. Well, when I backed out and came ahead, I did not hear her, I thought I was safe.

Q. You did not think you were far enough south to cross her regular course?

A. No sir.

Q. Is that so?

A. I do not understand what you are trying to get at.

Q. (Question read). No sir.

Q. Did I understand you to say that you heard the Telegraph coming in while you were backing out?

A. Yes sir.

Q. You knew the Telegraph's whistle?

A. Yes sir.

Q. You are positive that you heard her at that time?

A. Yes sir.

Q. Was she passing you going into her dock?

A. Yes sir.

Q. How big a circle did you make in turning, what is the diameter of the circle if completed that would be represented by the turning as you swung around to get on your course?

A. I do not know the size of the circle, I never measured.

Q. About how far off shore would you be when you were on your course, when you were first upon your course?

A. It is quite a distance out; I cannot tell exactly.

Q. Can you give us any idea?

A. No, I cannot.

Q. You said, I believe, that the tide was ebbing?

A. The tide was ebbing.

Q. Strong?

A. Well, it had been running out about an hour and a half.

Q. That would be a strong ebb tide?

A. Quite strong.

Q. As I understand you, you say that you were within your regular course and did not come south of the Grand Trunk?

A. Yes sir.

Q. Does the Kitsap turn, relative to her speed, faster under a slow bell or under a faster bell?

A. Well, she turns a little better under a slow bell.

Q. Relative to the speed she is making, the faster you are going the greater the circle you would turn then?

A. Yes sir.

Q. Did you look at the clock when the collision occurred?

A. No sir.

Q. How long before?

A. I looked at the clock when I came ahead on my course.

Q. When you straightened out on your course before the collision?

A. Yes sir.

Q. And it was then 4:39?

A. No, I left the dock at 4:35, and coming ahead it was about 4:36.

Q. You think it was 4:36.

A. Yes sir.

Q. That was one minute.

A. Yes sir.

Q. Then let me see if I get this right; it was not when you straightened out on your course, but when you went ahead from the backing?

A. Yes sir.

Q. That was the last time you looked at the clock.

A. Yes sir.

Q. So that you only estimated the time after that?

A. Yes sir.

Q. But I understand you did not hear the whistle of the Indianapolis, you did not recognize it, until you were straightened away on your course?

A. No sir.

Q. Did I understand you to say you heard it sounded three separate times after that?

A. Well, we—

Q. I ask you now if that is what you testified to in

answer to counsel's question. I understood you to say that you heard it three times after that, was that correct?

A. Yes sir.

Q. About how far apart?

A. Well, I cannot tell exactly the time, probably 15 or 20 seconds.

Q. Apart?

A. Yes sir.

Q. Then, after you straightened away on your course, about a minute elapsed?

A. We stopped dead when I heard the third whistle.

Q. I say about a minute before you saw the Indianapolis?

A. We had stopped and backed.

Q. I did not ask you what you were doing. I asked you about the lapse of time. If 15 seconds elapsed between the three distinct whistles that you heard after that time, it must have been about a minute elapsed before you saw her? I will put the question to you this way: How long a time had elapsed after you first heard the whistle of the Indianapolis before you saw the Indianapolis?

A. From the time I first heard the whistle until I saw her?

Q. Yes.

A. Oh, probably a minute or a little more.

Q. Well, do you think it is better than a minute or about a minute?

A. I should judge about a minute.

Q. Now where was the first whistle that you heard relative to your bow, or your vessel?

A. Three or four points on the port bow.

Q. Three or four points off the port bow.

A. Yes sir.

Q. Is that a fairly accurate approximation?

A. About what I should judge it was.

Q. Where did you hear the next one?

A. Well, I should think it was about in the same direction.

Q. And the next one about where?

A. It seemed to be getting further forward.

Q. That is the third one?

A. Yes sir.

Q. And where did the collision take place?

A. Right about the pilot house.

Q. And what was the angle of the collision?

A. I could not tell exactly.

Q. Well, as near as you can, you were in the pilot house, I understand?

A. Yes sir.

Q. Could you give an approximation on it?

A. Well, I should think two or three points off the bow.

Q. You were not satisfied with the speed the Kitsap was making when you first got her around on her course, were you? I do not mean when you got away on your course. I mean when you went ahead from your backing speed?

A. Satisfied? I do not know what you mean.

Q. You were not satisfied with her speed, were you?

A. Yes sir.

Q. Did not you instruct the engineer to speed her up?

A. I told him to "a little stronger."

Q. What did you do that for, if you were satisfied?

A. She was handled so slow—

Q. She was not going fast enough for you, is that it?

A. Well—

Q. I guess we will have to take it that that is what you mean. Where was this, captain?

A. As soon as we started ahead.

Q. That was after you gave him the goahead bell. Of course you did not tell him beforehand that you wanted to go a little faster than we usually go, you waited until you started, and you told him to give—

A. I told him to go a little stronger.

Q. Is that the way you put it, "go a little stronger"?

A. Yes sir.

Q. Who did you say was out ahead?

A. Welfare, the mate.

Q. Who else?

A. Two lookout men.

Q. What were their names?

A. Tongeres is one.

Q. What is the other?

A. His first name is Jens. I do not remember the last.

Q. Did you have him on the payroll?

A. Yes sir.

MR. BRONSON: At the next hearing, Mr. Merritt, will you let us have it?

Q. You had a conversation with the mate before you heard the Indianapolis, didn't you?

A. Yes sir.

Q. What was the substance of it?

A. He asked me how we were running, asked if I was on my course.

Q. Why did he ask you that?

A. Because he wanted to know.

Q. Why did he want to know, what was it made it interesting to him to know?

A. Because he was out on the lookout there and trying to help me find out how things were going.

Q. What did that have to do with the Indianapolis?

A. Had nothing to do with it.

Q. I asked you if you had a conversation with him about the Indianapolis, and you said yes, and then you explained it.

A. We had not heard the Indianapolis' whistle yet.

Q. Well, what did that suggest to your mind?

A. We heard the whistle three times afterwards.

Q. Were you conferring with the mate about it because you both of you were concerned about the Indianapolis and not wanting to be in collision with her, was that it?

A. We did not want to be in collision with anybody.

Q. Was that the reason you were talking about it, was that what you were thinking about?

A. No, I did not say that.

REDIRECT EXAMINATION:

Q. (Mr. Merritt). You were asked whether or not the

Kitsap backed well at this time. I will ask you whether or not anything had been done to the Kitsap to affect her backing quality?

A. Yes, there was something done to her.

Q. When and what?

A. She had a tank put back in the stern end, to get the stern down.

Q. When was that done?

A. Quite a while ago.

Q. Since that had been done had that affected her backing qualities?

A. It made her back better, yes.

Q. And at the time of the collision did she back well?

A. Yes sir.

Q. I believe you stated that one bell which you gave to go ahead was a bell for half speed, did you mean to state that you meant that he should run the engine at half speed?

A. No, slow speed.

Q. What was this one bell, what did that signal mean?

A. That is come ahead slow.

Q. What speed would she make coming ahead slow under that one bell?

A. Well, we were going so slow I had to give it a little stronger.

Q. How much stronger, if any, did he give her?

A. Oh, a little bit.

Q. About what speed was she making after that?

A. I should judge about five or six miles an hour.

Q. Now I understood you to say that the circle covered in turning would be greater in diameter, if she was going ahead fast than if she was going ahead slow. Is that what you intended to say?

A. I mean the faster you run the more space she will take to turn in.

Q. In what direction more space, in the diameter of the circle? Explain fully what effect the going ahead faster would make in the turning of the vessel, where it will carry her?

A. If running full speed she will go down toward the other docks more.

Q. Go further down toward the other docks.

A. Yes sir.

Q. What effect will it have on the diameter of the circle?

A. Make the circle larger.

Q. Now you say you estimated what the different times were after the time you looked at the clock as you started ahead. Now on what do you base your estimation as to the time when you heard the Indianapolis' whistle first and when you gave the stop bell and the back up bell, on what do you base your estimation?

A. Well, we backed up and came ahead and that took a minute, and we came around on the course in two and a half minutes.

Q. Now that is an estimation. On what do you base that estimation that it was two minutes and a half, not three and not one.

A. Because we make that turn right along every day.

Q. You base your estimation on the time it ordinarily takes to make that same turn under the same circumstances?

A. Yes sir.

Q. Now captain, I will ask you whether or not it is possible in a fog, especially a heavy fog, such as you say you had at this time, to locate exactly the direction from which the fog signals of another vessel came? I say in a fog such as you say you had at this time, to locate the direction in which the fog signals of another vessel came?

A. No.

Q. Was it possible for you to tell from the sounding of any of the first three or four signals you heard from the Indianapolis, whether or not she was crossing your bows or your course, or whether or not she was coming parallel with you?

A. I could not tell.

Q. You could not tell?

A. No, I could not tell.

Q. Had you any reason to think from the sound of

these signals that the Indianapolis was on a course which would cross your course?

A. No sir.

Q. Now you were asked whether or not you would consider it dangerous to back out and cross the course of the Indianapolis twice in this fog. Now, would you consider it dangerous to back out and cross that course twice, if she were on her ordinary course, at the point where she ordinarily is at that time?

A. No sir.

Q. I understood you to say on direct examination, that your course in backing out from this pier and turning on to your course to Four Mile rock, would not cross the ordinary course of the Indianapolis?

A. What is that?

Q. I understood you to say on direct examination, that your course backing out from pier 4 and turning on to your course to Four Mile rock, would not cross the ordinary course of the Indianapolis?

A. No, it would not cross it.

Q. Then, if you had heard the fog signals of the Indianapolis when you backed out from this pier, or when you went ahead, would you have considered it dangerous to have continued to turn and straighten on your course as you did do, under the speed which you were running?

MR. BRONSON: I object as calling for a conclusion of the witness.

A. No.

Q. (Mr. Bronson). That would be because you assumed that the Indianapolis was on her regular course, and your regular method of backing out and turning would not take you across her course at all.

A. Yes sir.

Q. But that would not change your former answer, I take it that you would not have backed out and gone ahead and turned and crossed her course, if you had known you were going to cross her course twice, that is if you had known she was out of her course, or you were out of your course?

A. I could not be out of that here.

Q. I say just assume that you were, you would not then go around and make that turn in front of her twice?

A. No, I would not make it if I had known she was out of her course.

Q. And you would not if you had known you were out of your course so as to bring you down?

A. No sir.

Q. In other words, you have assumed that she was on her regular course?

A. Yes sir.

Q. And you know what that regular course is, captain?

A. No, I do not know what her compass course is.

Q. You know what it is relative to the docks?

A. Yes, I know where he lands, yes, sure.

Q. You testified before the Inspectors didn't you, that you only looked at your watch when you backed away from the pier 4 at 4:35?

A. I have a clock in the pilot house.

Q. Did not you testify before the Inspectors, in answer to the following question, "You did not look at the clock at the time when she struck? Answer. I only looked at my watch when we backed away from pier 4 at 4:35." Did you so testify?

A. I looked at my clock. I never looked at my watch too.

Q. Did you so testify.

A. I suppose I did. I don't know.

Q. What bell do you give for half speed ahead?

A. Give one bell.

Q. That is the ordinary regulation for half speed?

A. Yes, clear weather, yes.

Q. Does the engineer keep track of the weather?

A. He knows when it is foggy.

Q. Does he keep track of the weather?

A. Yes sir.

Q. And one bell in foggy weather don't mean the same as one bell in clear weather?

A. No sir, one bell means slow in a fog.

Q. That is a fair interpretation of the regulations on vessels, is it?

A. It is with us fellows, yes. My brother there is an engineer and we have been together a good many years.

Q. And you have a kind of a private understanding with him in a fog he goes slower than he does—

A. We understand one another, yes.

Q. And he was not going fast enough to suit you at this time and you told him to go faster?

A. I told him to give it a little stronger, yes.

Q. Now captain, do I understand you to say that the Kitsap was re-tanked or in any way changed so that she was a better backing boat?

A. Yes sir.

Q. Fair backing boat.

A. She was a good backing boat.

Q. Does she back as well as the Hyak?

A. Yes sir.

Q. You backed out on this trip differently than you ordinarily do, didn't you?

A. Different side of the dock?

Q. That is what I mean.

A. Yes sir.

Q. You ordinarily back out from the other side of the dock?

A. Yes sir.

Q. And you figure these times here that you have testified to very largely from your previous experience?

A. Yes sir.

Q. (Mr. Merritt). In saying that you would not have crossed the Indianapolis bows twice, I will ask you whether or not her distance or apparent distance from you would have had any effect on you whether you would consider it dangerous to do that or not?

A. I do not understand your question.

Q. (Question read to witness). When I say crossing her bow, I mean crossing her course or apparent course. I will ask you this captain, you knew where the Indianapolis docked?

A. Yes sir.

Q. At the Colman dock?

A. Yes sir.

Q. And that was a considerable distance at least, south of where you docked?

A. Yes sir.

Q. And south of where your ordinary course in turning on to your course to Four Mile rock was?

A. Yes sir.

Q. Now, is it not a fact that the Indianapolis in turning to come into the Colman dock, makes something of a turn as she comes in to go along the face and end of the dock?

A. Yes, she makes a little turn.

Q. Now if you had heard the Indianapolis whistle a considerable distance off, knowing the dock to which she was headed and her course, would you then have considered it dangerous to have crossed the line from where you heard that whistle to where you were, twice?

A. If I had heard her in the fog I would not have taken any chances.

Q. (Mr. Bronson). What sized ships or what tonnage does your license call for?

A. Five hundred tons.

Q. Between what points?

A. Olympia to forty miles north from Seattle, any direction.

(Testimony of witness closed.)

O. L. HANSON, a witness called on behalf of the libellant, being duly sworn, testified as follows:

Q. (Mr. Merritt). Mr. Hanson, you were chief engineer on the Kitsap on December 14th, 1910?

A. Yes sir.

Q. What papers did you hold at that time?

A. Chief engineer.

Q. How long have you held chief engineer's license?

A. About 12 years.

Q. Where had you been running?

A. You mean what boats?

Q. Whereabouts?

A. All around the Sound.

Q. On the Sound during that time?

A. Yes sir.

Q. How long have you been chief engineer on the Kitsap?

A. This last time?

Q. At any time, all the time?

A. About four years altogether.

Q. How long had you been chief engineer this last time that I speak of?

A. A couple of months.

Q. Where was she running during these months?

A. Liberty bay.

Q. Where was her berth in Seattle?

A. Pier 4.

Q. Which side did she berth at pier 4?

A. North side.

Q. How many trips a day did she make from pier 4 to Liberty bay?

A. Two trips except the lay-day.

Q. How did you ordinarily leave pier 4 to get on your course to Liberty bay?

A. Backed out into the bay.

Q. Which way, whereabouts did you back into the bay?

A. In front of pier 5.

Q. Then what did you do?

A. We went ahead on her.

Q. How did you go ahead ordinarily?

A. You mean this day?

Q. Usually what was the way, how did you start ahead, what did you do?

A. Make a circle.

Q. Which way?

A. Towards the mudchute.

Q. You circled around to starboard did you?

A. Yes sir.

Q. How far did you usually back before you went head on again?

A. In front of pier 5.

Q. And how far is that, how far would the turn ordinarily carry you south in going ahead from in front of pier 5 to get on to your course to Liberty bay?

MR. BRONSON: I object to this witness testifying, he is not qualified to testify concerning the navigation of the vessel, unless he knows from his own experience what the facts are, I object.

MR. MERRITT: I will withdraw the question.

Q. I will ask you whether you have ever noticed how far south the boat went in making this turn to go on her course to Liberty bay.

MR. BRONSON: I renew my last objection.

A. You mean the time she got straightened out?

Q. Yes, on making that circle how far south would it carry her? In making this did you ever notice with reference to any of the docks?

A. In front of pier 5, somewhere there.

Q. You say in front of pier 5. You mean you backed in front of pier 5?

A. Yes and turned around in a circle.

Q. You mean you would be in front of pier 5?

A. Yes, but **make a circle.**

Q. How far south would the circle carry you, did you ever look or notice?

A. I never noticed it.

Q. Now do you remember December 14th, 1910?

A. Yes sir.

Q. Do you know what kind of weather you had that afternoon?

A. Yes sir.

A. What was the condition of the weather?

A. Thick foggy weather.

Q. On Elliott Bay?

A. Yes sir.

Q. Was there any wind?

A. No sir.

Q. What time did you first leave pier 4 for Liberty bay in the afternoon of that day?

A. The first time?

Q. Yes sir.

A. A few minutes after 4 I think it was.

Q. You had gotten on your course and had a collision and came back to the dock, did you?

A. Yes sir.

Q. Do you know what time you got back to the dock?

A. About 4:30.

Q. How long did you stay there?

A. Just a few minutes.

Q. What bells did you get then?

A. What do you mean?

Q. What bells did you get from the pilot house, after you had tied up to pier 4 the second time?

A. We were working on the bell alongside the dock.

Q. What bells did you get from the pilot house while you were tied up? Did you leave the dock then?

A. We lay there three or four minutes and then left the dock.

Q. What bell did you get to leave the dock?

A. I got one bell to stop and two to back up.

Q. You were working at the dock?

A. Yes, on the spring.

Q. You got one bell to stop and two to back up?

A. Yes sir.

Q. How did you back her up, what speed?

A. Just the ordinary speed as we always do.

Q. About how long did you continue backing her up?

A. About a minute.

Q. Then what bells did you get?

A. Had one bell to stop and one to come ahead.

Q. How did you come ahead, how did you answer that bell to come ahead?

A. Came ahead slow.

Q. You say you did come ahead slow?

A. Yes sir.

Q. How do you know you were coming ahead slow?

A. I know how the engine was turning over.

Q. How was she turning over?

A. Very slow.

Q. About how many turns was she making?

A. Sixty turns.

Q. How long did she continue making 60 turns?

A. About half a minute I guess.

Q. Then what happened?

A. The captain rang the gong and said a few turns more, a little stronger on, he says.

Q. What did you do to answer that?

A. Made it a little stronger.

Q. How much stronger?

A. About five more.

Q. How long did she continue with these 65 turns?

A. Kept on till I got a stop bell.

Q. What speed will the Kitsap make on turnings, such as you were making, while she was turning over 65 turns of the engine?

A. I could not tell you.

Q. How many turns does she make when running full speed?

A. 180.

Q. Do you know how much steam pressure you had at this time?

A. Yes sir.

Q. How much?

A. 165.

Q. She is an oil burner is she?

A. Yes sir.

Q. How many burners has she?

A. Two burners.

Q. How many were burning at this time?

A. One burner.

Q. You say you got a stop bell. When did you get that, about how long after you got this go ahead bell?

A. I should judge about three minutes.

Q. What did you do in answer to the stop bell?

A. I stopped her. Threw my reverse lever in the backing stroke.

Q. How long did the engines remain dead?

A. About 15 seconds.

Q. What happened?

A. I got two bells to back her astern full speed.

Q. Did the two bells mean, when the engine was dead, to back full speed?

A. No, he gave a jingle on top.

Q. How did you answer those two bells and the jingle?

A. Opened the engine wide open.

Q. What did the engine do?

A. Backed full speed astern.

Q. How long did she back full speed astern?

A. About 15 or 20 seconds.

Q. Then what happened?

A. Then the Indian hit us.

Q. Do you know where she hit you?

A. About six feet forward of the boiler.

Q. Then what happened?

A. Then he gave a bell to stop; he rung me off.

Q. What did you do after that?

A. I looked down in the fire room and saw three or four inches of water, and I did not see any show to pump it out and I went up to the captain.

Q. You afterwards went aboard the Indianapolis with the rest of the passengers and crew?

A. Yes, after the passengers got off.

Q. Who was in the fire room or engine room?

A. The fireman.

Q. What is his name?

A. Anderson.

Q. Anybody else there?

A. No sir.

Q. Do you know how the weather was during all this time?

A. Thick foggy weather.

Q. You had been in a collision before this?

A. Yes sir. A little while before.

CROSS EXAMINATION:

Q. (Mr. Bronson). What bell did you get to go ahead?

A. One bell.

Q. What speed does that signify?

A. That is according to what kind of weather it is.

Q. Now, generally speaking, Mr. Hanson, without regard to any private understanding that you have with anybody, what does that mean?

A. I do not understand you.

Q. Suppose you went on to a boat as engineer and did not have any private agreement or understanding with the master of the vessel, and you got one bell from a standstill, what would you understand that to mean?

A. Well, if it was foggy weather—

Q. Suppose you did not know anything about the weather, and you had not asked the captain whether it was foggy or not—

MR. MERRITT: I object as improper. There is nothing to show that the engineer is not supposed to know something about the weather and govern his actions accordingly.

A. Well, if it was foggy weather—

Q. I said suppose you did not know anything about the weather.

A. I suppose it calls for half speed.

Q. I understand you are testifying here on oath that it is discretionary with the engineer of a vessel when he is given a bell to go ahead, to say whether or not he will run her four miles an hour or eight miles an hour. A vessel like the Kitsap we will say, half speed would be about eight miles an hour?

A. No sir.

Q. Half speed of the Kitsap?

A. No sir.

Q. What would it be?

A. About seven miles.

Q. She only makes 14 miles?

A. Between 14 and 15.

Q. Well then we will say her half speed would be about seven miles?

A. Yes sir.

Q. Then it would be discretionary with you whether you went ahead at three and a half or seven miles, is that what you want to testify?

A. I do not understand that question.

Q. I mean to say would it be discretionary when you got one bell to go ahead, to say whether or not you will go three and a half or seven miles an hour, that you decide that question as distinguished from the master of the vessel?

A. That is if the captain and engineer have not got that fixed in some way.

Q. Well, you have not answered the question. Suppose they have not?

A. You have to go half speed.

Q. Then the question of fog has nothing to do with it. It is a question whether you have an understanding or agreement with the master of the vessel, is that it?

A. Yes sir.

Q. And you had in this case?

A. Yes sir.

Q. You had an agreement with the captain that in a fog one bell would be three and a half miles an hour.

A. In these small boats—

Q. Is that what you had an agreement with him about?

A. About what?

Q. Is it not your understanding with him that in foggy weather when he rang one bell you would run the boat at about three miles and a half?

A. Not three and a half, about five.

Q. That is what you call slow then?

A. Yes sir.

Q. Well, is that about what you did when you started her out?

A. Yes sir.

Q. That is about what you did. Now I understand that you testified before the Inspectors?

A. Yes sir.

Q. And you were asked did he ring a bell to you to tell you to quicken the runs and you answered no sir?

A. I did.

Q. And you were asked if he spoke to you through the tube?

A. Yes sir.

Q. And you said No sir. Do you want to correct that now, you were mistaken, and he did call down to you to tell you—

A. The captain and me talked it over afterwards, and I came to see that he did ring the bell.

Q. And he did do that?

A. Yes sir.

Q. And you did increase her speed?

A. Yes sir.

Q. You ordinarily left the north side of the dock, of pier 4, didn't you?

A. Yes sir.

Q. You did the first time?

A. Yes sir.

Q. The last time you left from the south side?

A. I don't know why—

Q. When you left from the north side, you just cast off your lines and backed right out?

A. I ain't running the ship, I run the engine room.
(Testimony of witness closed).

A. E. WELFARE, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). Mr. Welfare, you were mate of the Kitsap on December 14th, 1910.

A. Yes sir.

Q. What papers did you hold then?

A. Mate and pilot, five hundred tons, Olympia to Cape Flattery.

Q. How long had you been mate on the Kitsap?

A. Three months.

Q. Did you ever run on her before?

A. Yes sir.

Q. How much?

A. Oh, one or two months, guess.

Q. Where was she running during these three months?

A. Seattle to Paulsbo.

Q. Where was her berth in Seattle?

A. Pier 4.

Q. Which side of the pier did she ordinarily berth?

A. North side.

Q. How did she leave the pier to get on to her course for Paulsbo?

A. Backed out from pier 4 to the north side of pier 5, and came on her course to Four mile rock.

Q. Your course to Paulsbo took her past Four mile rock?

A. Yes sir.

Q. Now had you noticed how she came around after she had started ahead to get on her course, during the three months you had been on her as mate?

A. Yes sir.

Q. How far south would she go in making the turn to get on this course?

MR. BRONSON: I object as incompetent, irrelevant and immaterial, what she did on other occasions.

A. Grand Trunk dock.

Q. How often did she make this trip?

A. Twice a day except Wednesdays and Saturdays.

Q. What trips did she make then?

A. She had a lay over day on Wednesdays, we would come in from Paulsbo and lay from 9 until 4.

Q. Then on Saturdays what trips did you make?

A. Came in at 9 o'clock and left at 3.

Q. In making these turns did you notice how the helm was?

A. In making these turns this night?

Q. No, at other times.

A. When he backs out and gives the bell and comes ahead, he has to have his wheel hard over.

Q. Where is your position when he backs out?

A. At the stern.

Q. What deck?

A. I am generally on the hurricane deck.

Q. Is there any way you can see from the stern of the vessel on the hurricane deck how the helm is?

A. Yes sir.

Q. Did you notice prior to this time how the helm was as you came ahead in making this turn?

A. Yes sir.

Q. And had you noticed how far south the turn would carry her?

MR. BRONSON: I object as incompetent, irrelevant and immaterial, and as constituting no basis for determining the course of the Kitsap in this case, because, in the first place she did not leave from the same side of the dock and in the next place the conditions were changing from day to day, and naturally inaccuracies would occur in steering the course, and as a matter of fact it is too uncertain and unreliable a way in which to determine how she went this day.

A. At that night?

Q. At previous times.

A. Well, never carried her any further south than the Grand Trunk dock.

Q. Now at this time what kind of weather did you have?

A. Thick weather, very foggy.

Q. You left the north side of pier 4 somewhere about 4 o'clock, did you?

A. Somewhere around 4:30 or 4:35.

Q. Was that the first time you left?

A. That was the second time.

Q. When did you leave the first time?

A. Four o'clock.

Q. You went out and had a collision and came back again?

A. Yes sir.

Q. Where did you tie up the second time?

A. Tied up on the south side of pier 4.

Q. Do you know about when you left on the second trip?

A. 4:35.

Q. How did you back out this time?

A. We backed out around, we backed out around the face of the pier 4 to about the face of pier 5.

Q. And then how did she go?

A. Well, I was standing at the aft end there when he gave him a bell to come ahead, the tiller was hard over.

Q. The tiller was hard over which way?

A. That is hard astarboard.

Q. Now how would the helm be, how would that throw the helm?

A. Hard aport.

Q. And how did she go ahead?

A. Came ahead on a port helm.

Q. How fast, about?

A. I should judge about 4 miles an hour.

Q. What did you do then?

A. Then he gave her a bell and came ahead and I started forward.

Q. Where did you go?

A. In front of the pilot house.

Q. Where did you stay after that?

A. Sayed right there.

Q. In front of the pilot house?

A. Yes sir.

Q. Who had charge of the wheel?

A. Captain Hanson.

Q. He was in the pilot house?

A. Yes sir.

Q. Was there anybody on the lookout besides yourself?

A. Yes sir. Two of the deck hands.

Q. Where were they?

A. Forward on the passenger deck.

Q. Who were they?

A. Ole here, and a man named Jens.

Q. Ole Tangeres?

A. Yes sir.

Q. Do you know how long these men had been working on the Kitsap?

A. Well, one of them, this man here, was on her three months with me.

Q. You mean Tangeres?

A. Yes sir.

Q. What kind of a man was he?

A. A good man.

Q. How was the other man—who is he?

A. The other man is a good man.

Q. How long had he been on her?

A. He had been there a year.

Q. You stood out in front of the pilot house. Now were any of the windows in the pilot house closed?

A. The windows were all down.

Q. Did you know when the Kitsap got on her course?

A. Only by asking Captain Hanson.

Q. You did ask him?

A. Yes sir.

Q. What did he tell you?

MR. BRONSON: I object as hearsay.

A. He told me she was on her course.

Q. Did you at this time pay any attention to how fast the Kitsap was going?

A. Yes sir.

Q. How was she running during this time?

A. She was running about four or five miles an hour. Going very slow.

Q. Had you any interest in knowing or watching how fast the Kitsap was going?

A. Yes sir.

Q. What?

A. We just had had an accident thirty minutes before that and we did not want to have another one if we could help it.

Q. When did you first hear the Indianapolis whistle?

A. I first heard her whistle after I came forward and asked the captain if we were on the course yet.

Q. Where did you hear these whistles, what direction?

A. I heard him on the port bow.

Q. How did they sound, were they close to you?

A. Well, the first one or two was pretty well off, but they were getting closer right along.

Q. About how many points off your port bow?

A. Two points.

Q. Did you hear any of her whistles before that?

A. No sir.

Q. Did you ever hear any of her whistles on the star-board bow?

A. No sir.

Q. What was done after you heard the Indianapolis's whistles?

A. I said to Captain Hanson, did you hear the Indianapolis blowing?

Q. Did he say anything?

A. He says yes, I hear her, something like that.

Q. Go ahead and state what is the next thing that occurred there?

A. Well then, I heard another whistle. I says, she is getting closer, you better stop her, captain.

Q. What did he do, if anything?

A. He stopped her.

Q. What bell did he give?

A. One bell.

Q. Did you hear it?

A. Yes sir.

Q. Then what happened?

A. Well, the next whistle—I don't know, one or two whistles, I says, she is getting pretty close, captain, better back up.

Q. What did he do, if anything?

A. He backed her up.

Q. Do you know what bells he gave?

A. He would have to give two bells.

Q. Did you hear them?

A. I heard the two bells, but I do not remember hearing the jingle.

Q. Do you know whether or not the engineer answered these bells?

A. Yes sir, I know he answered the bells.

Q. Had you seen the Indianapolis at this time?

A. No sir.

Q. Did you afterwards see her?

A. Yes sir.

Q. What part of the Indianapolis did you first see?

A. I seen her green and red light, and white bow.

Q. Which light did you see first?

A. Seen the green light.

Q. About how far away was she when you first saw the lights?

A. Seventy-five to a hundred feet.

Q. Then what happened?

A. About 15 seconds after that there was a hell of a crash.

Q. How was she coming at the time you first saw her?

A. She was coming right at the pilot house.

Q. At about what angle?

A. About 45° I guess.

Q. Do you know how the Kitsap was running at the time the Indianapolis struck her?

A. I do not think the Kitsap had but very little headway.

Q. Do you know about how long it takes to check her headway when she is running under a slow bell, and then the engines have been stopped and are dead for 10 or 15 seconds, and then run full speed astern?

A. Yes sir.

Q. About how long would it take to check her?

A. 15 or 20 seconds.

Q. Well, what happened after the Indianapolis struck the Kitsap?

A. Why, the captain jumped out of the pilot house I believe, I never seen him. After she hit he jumped back in and stopped her, rang the engineer off.

Q. Then what did you do?

A. Well, I jumped down on deck and sung out to the captain of the Indian to come ahead again, so as to get our plank on his rail to get our people off.

Q. How much of a cut had the Indian made in the Kitsap?

A. Went into her about seven or seven and a half feet.

Q. And had he backed away then?

A. He backed away about 10 feet.

Q. You sung out to him to come ahead again?

A. I sung out to him to come ahead, but he was coming ahead when I sung out to him to come ahead.

Q. He did come ahead?

A. Yes sir.

Q. Then what did he do?

A. He put his stem against her guard and we got our plank on his bow and got the people off, he kept working his boat ahead.

Q. About how long did that take?

A. I think about six minutes to put the passengers aboard of her.

Q. Do you know what was done? Tell what was done.

A. Well, while we were putting the passengers aboard Captain Penfield, I believe, ordered the lines, ordered the boys to put the lines on, a spring line and a head line was put on, and they were ordered cast off again. They sung out for us to get aboard. Well, when they sung out to get aboard. I was down on deck trying to get the mail, and the chief and me had to climb aboard of her because she was going to back away.

Q. Well, were the lines thrown off?

A. Yes sir.

Q. Did she back away?

A. Yes sir.

Q. What was done after that?

A. Well, I believe they came up alongside of her again, the Indian and the Telegraph.

Q. What happened to the Kitsap after that?

A. Well, the Kitsap laid there for about 10 minutes, I think 10 or 15 minutes before she went down, after we got the people off her.

Q. Then she sank?

A. Yes sir.

Q. About how long, from the time you left the south side of pier 4 was it that the Indianapolis struck the Kitsap?

A. Oh, four or five minutes.

Q. Do you know whether the Kitsap was loaded that day?

A. No sir, she was not loaded; she never had more than two tons of freight on her.

Q. How were your oil tanks?

A. The oil tanks were pretty light. We had enough oil to make the round trip with. The next day was oil day.

Q. Where were her oil tanks?

A. Forward of the boiler.

Q. What effect did that have on the Kitsap when the Indian struck her?

A. Jarred her pretty bad. She took a list to starboard, and seemed to hold her there for a second, and she dropped down again.

CROSS EXAMINATION:

Q. (Mr. Bronson). Where were you when the first collision took place?

A. Standing in front of the pilot house on the Kitsap.

Q. What was the effect on the launch that you collided with?

MR. MERRITT: I object as incompetent, irrelevant and immaterial and not proper cross examination. It does not appear that there was any launch.

A. There was not much to it. I think we were about half ways down here.

Q. What I am getting at is, did you ride her down, did you go over her?

A. No sir. Just made a hole in her and she went right down stern first a couple of minutes afterwards.

Q. Was there any excitement following that?

A. There was a little excitement amongst the passengers, yes.

Q. Did not that excitement extend to the crew at all?

A. Not that I know of.

Q. There was a man lost, was there not?

A. There was a man lost.

Q. Did not that accident tend to create any ripple on the calm of ordinary discipline at all? What I mean to say is, were the members of the crew absolutely indifferent to that, not mentally affected by it?

A. We did all we could to save the crew.

Q. We do not question that. I am asking what effect that had on the master of the vessel, was the master just as calm after that as he was before?

A. Well, we all felt bad about it, certainly. He was not as calm after that as he was before.

Q. When you backed away from the dock ordinarily from pier 4, what do you do, let go your lines and back right out?

A. Well, we shortened up our lines a few minutes before leaving time and he works his engine ahead on the spring line.

Q. For what purpose?

A. That would give the chief a chance to work his engines before getting ready to leave.

Q. What I am getting at is, when you backed away, you backed right straight out, you did not swing the vessel on the line?

A. We backed straight out.

Q. Now this time when you backed away from the south side of pier 4, did you use the lines on her at all?

A. No sir. Backed in the same way as on the north side of pier 4.

Q. When you started away from the north side of pier 4, what position is the helm in?

A. He would have his helm to starboard.

Q. What position would he have his helm in when you backed away from the south side of the pier?

A. Have the helm in the same way.

Q. Would not that throw your vessel against the pier, until you were clear of it?

A. Why the stern, lying there that night, was away out from the pier. We just had our stern hanging from the corner of the dock fifty feet.

Q. You testified before the Inspectors didn't you, that this Kitsap was a poor backer?

A. Yes, I guess I did.

Q. What is the significance or what is the meaning of a jingle?

A. A jingle means full speed astern or full speed ahead, that is the meaning of it.

Q. Full speed, that is what it means?

A. Yes sir.

Q. When you asked him had he hooked her on, did you mean had he rung the jingle?

A. Yes, that is what I meant.

Q. What speed does she make full speed ahead?

A. 14 or 15 miles.

Q. You said you heard the Indianapolis four or five times, didn't you?

A. Yes sir.

Q. And you testified that their direction appeared to remain in the same position, about the same direction?

A. The whistles, yes.

Q. Now did I understand you to say that the angle of the collision was about 45° off from the perpendicular?

A. When I seen her?

Q. Yes sir.

A. Well, I don't know, 45°, but she was coming right for the pilot house when I seen her.

Q. Well, they were not anywhere near head and head on?

A. No sir?

Q. She was well off your port bow? Of course 45° would mean she was pretty nearly coming at you abeam.

A. Yes sir.

Q. Why did you need to ask the captain if he had hooked her on?

A. Well, I wanted to know, because we just had had an accident a few minutes before.

Q. I did not ask your motive. I asked you why you asked the captain whether he had hooked her on.

A. Well, I wanted to know if she was going full speed or going slow and what he was doing.

Q. Now why did you not know how fast she was going?

A. I just had come from aft.

Q. Did not you say you had looked down at the water?

A. Immediately after I asked him I did, yes sir.

Q. Had not you looked down at the water before that?

A. I do not remember.

Q. Did not you testify before the Inspectors?

A. That I looked down at the water? I do not know whether I did or not.

Q. You do not know whether you looked down or not then?

A. No sir.

Q. If you had looked down you would know the difference between four or five miles an hour and 14 or 15?

A. I would not have asked him.

Q. You would know then, would you not?

A. Sure.

Q. Whether you were hooked on or not?

A. Sure.

Q. As a matter of fact are you not satisfied from the fact that you did ask the captain whether he had hooked her on or not, that you did not know how fast she was going, of your own knowledge?

A. No, I did not know how fast we were going.

Q. And of course you got your idea from your conversation with him?

A. Yes, I wanted to find out how we were going, how he was running her.

Q. You knew that the Indianapolis was about due?

A. Yes, I thought she ought to be coming.

Q. I understood you to testify that ordinarily your course would be, when swinging from left to right, after you got away, that you start ahead on leaving the dock, and bringing you down to a point not south of the Grand Trunk dock, and describing a half circle into the bay?

A. Yes sir.

Q. You would not have made that course intending to go down below the Grand Trunk dock in front of the Indianapolis in a fog, would you?

A. No.

Q. You said to the captain, the Indianapolis is coming, we will have to keep a lookout for her, didn't you?

A. Yes sir.

Q. Do you remember the captain saying to you, when you asked him if he was on his course, oh, I am keeping her swinging a little.

A. I will keep her over a little.

Q. What did he mean by that, that he would keep her over a little, swing her a little?

A. He says I will keep her over a little so that we will clear her good.

Q. Clear what, the Indianapolis?

A. Yes, so that we will be sure to clear her, something like that.

Q. He meant by keeping her over, keeping her course, and making a starboard turn still?

A. She was on her course.

MR. MERRITT: I object, the witness cannot say what the captain meant by what he said.

MR. BRONSON: If he don't know what he meant he can say so.

Q. Did you know what the captain meant?

A. No.

REDIRECT EXAMINATION:

Q. (Mr. Merritt). You stated, Mr. Welfare, that the Indianapolis came at the Kitsap at about an angle of 45° . Now do you know what angle 45° is?

A. Not exactly.

Q. Well, about how many points off the port bow was the Indianapolis as she came at the Kitsap?

A. I think about five points.

Q. Then did she come at the Kitsap nearly abeam?

A. No.

Q. Abeam would be nearly at right angles.

(Witness draws approximate position of vessels at time of collision.)

Now mark this one A and this one B. Now which letter does A represent?

A. The Kitsap.

Q. And B?

A. The Indianapolis.

Q. And the point of the arrow is toward the bow of each vessel?

A. Yes sir.

Q. And the angle which you have designated there is about the angle of it?

A. About the angle I thought the Indian was coming.

MR. MERRITT: I offer this diagram in evidence.

Paper marked libelant's exhibit "A," filed and returned herewith.

Q. (Mr. Bronson). You did not of course, intend to represent the comparative sizes of the vessels in this illustration here?

A. No sir.

(Testimony of witness closed).

OLE TONGEROSE, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). Were you employed on the Kitsap

on December 14th, 1910, at the time of the collision with the Indianapolis?

A. Yes sir.

Q. How long had you been on her?

A. Well, I went and worked on her for over a year altogether.

Q. How long had you been on her at this time?

A. About a month, I should judge.

Q. What were you doing on her?

A. I was decking.

Q. Were you on her when she left the south side of pier 4, at the time of the collision with the Indianapolis?

A. Yes sir.

Q. Where were you standing?

A. I was on the lookout.

Q. Whereabouts on the lookout?

A. I was a little forward of the pilot house on the passenger deck.

Q. Were you the regular lookout?

A. No, it was another man's turn, but I was helping him.

Q. How did she back out?

A. Well, she backed the usual way.

Q. How far back did she go?

A. I know she went quite a ways, because I could see the Reliance, that laid at the face of the dock.

Q. Which dock?

A. The same dock we laid at.

Q. You say she backed out the usual way.

A. Backed around in front of pier 5.

Q. And then how did she go?

A. Well, then, we stopped and came ahead.

Q. And how did she go ahead or start ahead, or turn or what?

A. She seemed to be swinging all the time.

Q. You had been on her about a month.

A. Yes sir.

Q. During this time she had been leaving pier 4?

A. Yes sir.

Q. Had you ever noticed how far south along the docks the turn would take her usually when she left?

A. Well just about to the Grand Trunk dock.

Q. Did the turn take her beyond the Grand Trunk dock?

A. No sir I never saw her go that far south in making the turn.

MR. BRONSON: I object to the witness detailing past performances of the boat, as incompetent and immaterial. It is not necessarily based upon the same facts and circumstances that existed on the day in question.

Q. Do you know what time you left the dock the second time?

A. Well, I should judge somewhere about 4:30.

Q. Did you look at the clock?

A. No sir.

Q. Then you are simply guessing?

A. I should judge by the Reliance, he was supposed to leave at 4:30, he was there then.

Q. You do not know what time the Reliance did leave that day?

A. No sir.

Q. Did you hear the Indianapolis' whistle that day?

A. I heard whistles. I heard the captain say he was on the course. Then a little while afterwards I heard the Indian.

Q. When did you hear the Indian whistle?

A. A couple of points about, just about as close as I could get it, on the port bow.

Q. Had not you heard her before that?

A. No sir.

Q. Ever hear her on the starboard bow?

A. No sir.

Q. You heard her about a couple of points off the port bow?

A. Yes sir.

Q. How many whistles did you hear from the Indian?

A. Well, I should judge five or six whistles.

Q. Do you know what was done on the Kitsap after the whistles were heard, did you hear any bells there?

A. I heard two or three whistles like that, then I heard the mate ask the captain what speed he was running, and he says very well; very well, he says, you better stop her.

Q. Did you hear any bells after that?

A. No, I would not say I heard any bells, I did not notice that.

Q. What was done after that?

A. Well, I heard him ask again, he says you better stop her, you better back her up, he is getting closer.

Q. Did you hear bells then?

A. Yes sir.

Q. What bells?

A. Two bells.

Q. Anything else?

A. Well, just a little while afterwards I heard the jingle.

Q. Do you know what the ship was running at that time?

A. When the Indian hit us?

Q. Yes.

A. I thought he was making back way, I think he was making astern.

Q. About how long after you heard the back bells before the Indian struck her?

A. I should judge about 20 or 25 seconds.

Q. When did you first see the Indian?

A. I saw her on the port bow.

Q. Whereabouts on the port bow?

A. Well, about 4 points.

Q. About how far away was she?

A. About 100 feet.

Q. Could you see her lights?

A. Yes sir.

Q. What lights did you see?

A. Well, the first I saw was the headlight.

Q. Then she struck the Kitsap.

A. I seen the hull; I first seen the light and about a second afterwards I seen the hull.

Q. And about how long after that was it she struck the Kitsap?

A. Well, I do not know. I had time to take about three or four steps, from that time until she hit us.

Q. What caused you to take the three or four steps?

A. I seen where she was aiming for and I ran away from that place where I stood.

Q. Where did you stand?

A. I stood right on the port gangway, just about the stairway keeping people off the bow, we did not want anybody out there.

Q. You had time to take three or four steps when she struck her?

A. Yes. The captain gave orders to keep everybody off the bow. Things has to be pretty quiet to hear the whistles.

Q. What kind of weather did you have?

A. Awful foggy weather.

Q. Was the fog in banks or rising and lowering?

A. No sir, I did not see any banks; it all seemed alike to me.

Q. How was it, very dark at that time?

A. Pretty dark.

Q. Were the lights on on the Kitsap?

A. Yes sir.

Q. Do you know whether she was sounding any fog signals?

A. Yes sir.

Q. How often?

A. Well, seemed pretty often, about every 10 or 15 seconds.

Q. Had she been sounding them since she left the dock?

A. Yes sir.

Q. Do you know who was at the wheel?

A. Yes sir.

Q. Who?

A. Captain Hanson.

Q. Do you know where the mate was?

A. Yes sir.

Q. Where?

A. Right in front of the pilot house.

Q. Do you know how the windows of the pilot house were?

A. I will not say but those I seen were all open.

Q. What happened after the Indian struck the Kitsap?

A. She backed away 10 or 12 feet, and she came ahead again.

Q. Where did she come ahead?

A. She came ahead about two or three feet further ahead than the cut.

Q. Did she put her bow up against the Kitsap?

A. Yes, she put her bow against the guard.

Q. Then what was done?

A. We put our passenger plank on the Indianapolis' bow.

Q. And took off the passengers and crew?

A. Yes sir, the passengers, I was at one end of the gang plank and the mate at the other to keep them from crowding on the gang plank.

Q. Could you tell about how fast the Indian was going at that time?

A. No, I could not tell. I know she was coming pretty fast.

Q. What was done after you got the passengers and crew on the Indian?

A. Well, I went down below to look for some more after the crash there, and I hollered.

Q. You mean on the Kitsap?

A. Yes, on the Kitsap, to look for some more. I did not see any and the chief came along with some instruments and I helped him with the instruments.

Q. And after you all got aboard the Indian what happened?

A. Then she rolled over on the starboard side.

Q. About how long did it take to get the passengers off and the Indian came back against the Kitsap the second time, about how long did it take to get the passengers and crew aboard?

A. Four or five minutes.

Q. After that the Kitsap sank.

A. Yes, she did not sink but she rolled over to the starboard side.

Q. Did she sink afterwards?

A. Yes, about 15 minutes afterwards.

Q. Where was the Indian during this time?

A. Well, he was about 20 or 30 feet from her.

Q. He backed away after he took the passengers?

A. Yes sir.

Q. Did you ever look at the water to see what speed you were going?

A. Yes, sir.

Q. When?

A. After we started going ahead.

Q. And what speed would you say the Kitsap was making when you looked at the water?

A. I do not know, about three or four or five miles.

Q. Did you hear the telegraph's whistle that day?

A. No, sir, not that I can remember.

Q. Do you know how far north you backed that day?

A. No, I do not know, I could not see the shore.

Q. What effect on the Kitsap did the Indian striking her have?

A. Well, I noticed she gave her an awful jolt.

Q. Were you able to stand up?

A. No, throwed me about 10 or 15 feet.

CROSS-EXAMINATION.

Q. (Mr. Bronson) You answered, Mr. Merritt, that when you backed out you backed out quite a ways.

A. Yes sir.

Q. Could you give any idea how far?

A. I know she was backing for a minute anyhow.

Q. Backing for a minute?

A. Yes sir.

Q. What speed was she backing at?

A. Well, I do not know; she backs up pretty fair.

Q. Well, what would you call fast?

A. Well, her usual backing.

Q. She backed as far as she usually backed?

A. Yes sir.

Q. What would that be?

A. Well, I could not tell you.

Q. About half speed?

A. About half speed? What do you mean?

Q. You would be backing about half speed stern motion?

A. Somewhere like that I suppose.

Q. Then did he let her sag down, or put her engine ahead to start her, did he let her stop any momentum or did he stop with the engines before she stopped herself?

A. He has got to shut off steam to stop the engine.

Q. When you backed her out at half speed, then he got a signal to shut the engines off?

A. He got bells to stop.

Q. Now did he get immediately a come ahead bell, or wait until she ran down that speed before they went ahead?

A. Well, he kept on backing until he got the bells to come ahead.

Q. Well, did he get a goahead bell as soon as he got a back bell?

A. Of course he gave a stop bell and then he gave a bell to come ahead.

Q. That is immediately?

A. Yes, could not be very far apart.

Q. A few seconds I suppose?

A. Yes sir.

Q. Now you testified before the Inspectors didn't you?

A. Yes sir.

Q. You testified that when you first heard the India-

napolis you did not know whether she had got on her course or not, didn't you?

A. Yes sir.

Q. You also testified that you heard the whistle about five minutes before the collision?

A. Yes sir.

Q. That was the Indianapolis whistle?

A. I do not know whether I did or not, you have got it there.

Q. Do you know whether you did or not?

A. I cannot remember.

Q. Do you remember whether it was five minutes or not?

A. I do not think it was that long.

Q. You do not think it was that long?

A. No sir.

Q. Now, do you remember whether you testified that when you first saw the Indianapolis she was about 50 or 60 feet away?

A. I said 50 to 75.

Q. Did not you also testify that she was 50 to 75 or 50 to 60?

MR. MERRITT: I object, counsel is not correctly stating what the witness testified.

Q. Did not you testify "I seen the Indianapolis 50 or 75 feet away aiming for the Kitsap?"

A. Yes sir.

Q. Did not you testify further "He struck just where he was headed for?" A. "Yes." Q. "How far away?" A. "Fifty or sixty feet?"

A. Yes. I did not measure it but that is about what I said.

Q. Is that about your opinion of what she was away, now?

A. Between 50 and 100 feet I would say.

Q. You say anywhere from 50 to 100 feet then?

A. Yes sir.

Q. How many whistles did you hear from the Indianapolis?

A. I heard about five or six whistles.

Q. They were a little off your port bow?

A. Yes sir.

Q. And they continued in the same direction did they?

A. Yes sir.

(Testimony of witness closed.)

Hearing adjourned until Thursday, March 16, 1911, at 10 o'clock A. M.

Seattle, Washington, March 16th, 1911.

Continuation of Proceedings pursuant to adjournment.

PRESENT: Mr. Merritt, for the libelant.

Mr. Bronson, for the Claimant.

F. F. WELD, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). Where do you reside?

A. I reside at Rolling Bay, Bainbridge Island.

Q. What is your business?

A. My business is structural engineer?

Q. How long have you been engaged in that business?

A. In civil and structural engineering for the past 17 years.

Q. Have you ever had any experience on board steam vessels?

A. I have.

Q. What experience?

A. With the United States Coast Geodetic survey, I was with them for eight years, and for the last four or five years of that time I spent probably fifty per cent of my time on board their vessels.

Q. Were you a passenger on board the Indianapolis in December last at the time she was in collision with the Kit-sap?

A. I was.

Q. Where did you board the Indianapolis?

A. At Tacoma.

Q. Where were you on the Indianapolis during the trip from Tacoma to Seattle?

A. I was in the extreme rear of the ladies' cabin on the starboard side, the last seat.

Q. What deck?

A. That is the main deck I believe.

Q. That is below the main saloon, the next deck below the main saloon?

A. Well sir, I am not very familiar with the Indianapolis. It is the general passenger cabin where the chairs are specially arranged for comfort in the ladies' department.

Q. Were you in this seat all the way over?

A. All the way.

Q. Did you feel the impact of the collision with the Kitsap?

A. I did.

Q. Now prior to that impact I will ask you whether or not you had noticed any difference in the motion or vibration of the Indianapolis from the time she left Tacoma and had gotten under her speed, until this collision?

A. I did not.

Q. Are you familiar with the motion or vibration of steam vessels when they are working the engines astern?

A. I am, quite.

Q. Did you feel any such motion as that or vibration?

A. I did not, I did not notice any such motion.

Q. Where, from your experience, would such vibration or motion be most noticeable, what part of the vessel?

A. In the rear of the vessel, over the wheel.

Q. That is where you were?

A. Yes sir.

CROSS EXAMINATION:

Q. (Mr. Bronson). You say you did not notice any difference from the time she left the dock at Tacoma until the impact?

A. I did not.

Q. You say that you are a structural engineer?

A. Yes, civil and structural engineer.

Q. And you stated that you were in the main cabin of the Indianapolis?

A. Yes sir.

Q. And were on the main deck?

A. If that cabin is on the main deck.

Q. You are testifying here as a structural engineer, are you not?

A. Yes sir.

Q. And you do not know whether that is the main deck or not?

A. Yes, that is the main deck.

REDIRECT EXAMINATION:

Q. (Mr. Merritt). Is that the deck where the piano is?

A. Yes sir.

(Testimony of witness closed.)

THOMAS E. FOSTER, a witness called on behalf of the libelant being duly sworn, testified as follows:

Q. (Mr. Merritt). Where do you reside, Mr. Foster?

A. Kitsap county.

Q. What is your business?

A. I am foreman for the Washington Stevedoring company.

Q. Have you ever been to sea?

A. Yes sir.

Q. About how long?

A. Oh, eight or ten years.

Q. Been on steam vessels?

A. Steam vessels.

Q. Were you a passenger on board the Kitsap on December 14th, 1910, at the time she was in collision with the Indianapolis?

A. I was.

Q. Do you remember the time she left the dock on this trip in which she had this collision?

A. Yes, I remember the time.

Q. Where were you standing?

A. I was standing right at the bow at the gangway.

Q. On which deck?

A. On the main deck.

Q. When you speak of the main deck is that the passenger deck?

A. That is the passenger deck.

Q. That is not the deck where the engine is?

A. No sir.

Q. That is the deck above the engine?

A. Yes sir.

Q. You were standing inside or outside of the cabin?

A. Outside.

Q. Were you standing there all the time?

A. All the time?

Q. On which side did you say?

A. On the starboard side.

Q. Of the Kitsap?

A. Yes.

Q. Were you standing on the right hand side or the left hand side of the Kitsap?

A. The starboard side, is not that where she was struck?

Q. Which side were you standing on, the right hand or left hand side of the ladder that goes up to the pilot house?

A. I would be standing on the left hand side of the ladder going up to the pilot house, that would be facing the bow.

Q. You were facing the bow and standing on the left hand side of the ladder that goes to the pilot house?

A. Yes sir.

Q. Then you were standing on the port side.

A. Yes. I made a mistake between the starboard and the port.

Q. Now I ask you if you heard any bells from the engine room after the Kitsap had started ahead, after backing away from the dock?

A. I heard one bell.

Q. You heard one bell?

A. Yes sir.

Q. Did you hear any bells after that?

A. Not until I heard the Indianapolis' whistle, then I heard the bells.

Q. Then what bells did you hear?

A. I heard one bell, then two bells and a jingle.

Q. Do you know what that one bell means?

A. Yes sir.

Q. What did it mean?

A. Means to stop.

Q. Does it mean to stop under all conditions?

A. No.

Q. What?

A. One bell means to slow down, then the other bell is to stop, this second bell to stop, then if you want to go astern, you get two bells.

Q. What bells are given if the vessel is already running under a slow bell, to stop?

A. One bell.

Q. You heard the one bell?

A. I heard one bell.

Q. Then you heard two bells and a jingle?

A. I heard two bells and a jingle.

Q. Do you know what these bells are for?

A. Two bells is for astern and the jingle is full speed astern.

Q. Now did you notice anything in the motion or feel of the Kitsap after that, to indicate whether the bells were answered?

A. Yes, she was shaking like she was backing.

Q. Did you see the Indianapolis?

A. I seen the Indianapolis.

Q. Where was the Indianapolis when you saw her, with reference to where you stood?

A. Coming right straight for me.

Q. You say you stood just at the corner?

A. I stood right under the pilot house corner, like that. Right underneath.

Q. What did you do?

A. Well, as soon as I seen her, I ran aft. I sung out "Lookout everybody." Then the people commenced to—I put my foot up on the rail, and saw her strike, I seen the Indianapolis hit us. I threw off my coat and wanted to get a belt, I thought I would have to have a drink or swim or something.

Q. Did you know how the Kitsap was running when the Indianapolis struck her?

A. She was dead still.

Q. Do you know how the Indianapolis was running?

A. The Indianapolis was coming pretty speedy, she was showing a great big foam of water on her bow when she struck.

Q. Now where did the Indianapolis strike the Kitsap with reference to the place where you stood?

A. Well, just struck her underneath the pilothouse

Q. Was that where you had been standing?

A. That was where I had been standing.

Q. Have you any means of knowing that she did strike at the place where you were standing?

A. My things what I had with me, my parcels, were right alongside of me where I was standing, and when I came back again from the aft end, I saw the gaping hole and I looked for my parcels and they were both gone. And here was one bundle and here was the other and they were both gone down in the hole.

Q. I do not understand whether you said in the hole or in the hold. Do you mean in the hole the Indianapolis had made?

A. Yes, in the deck that she had made.

Q. Now you had been on the Kitsap when she went out the first time?

A. Yes, on the first trip.

Q. What kind of weather was there on the sound and during all this time?

A. Very thick, no breeze at all, no wind, very thick weather.

Q. What quarter did you first hear the Indianapolis whistle from?

A. From the port quarter, sir.

Q. Did you ever hear it from the starboard?

A. No, sir.

Q. From the other side?

A. No sir. Never heard it.

Q. Was the Kitsap giving any signals?

A. Yes sir.

Q. How often?

A. Very often. About pretty near, say every two or three seconds, blowing very rapidly.

CROSS EXAMINATION.

Q. (Mr. Bronson). The Kitsap was whistling about every three seconds?

A. Well, three to four about as she came around.

Q. Are you a sailor?

A. Yes sir.

Q. How old are you?

A. I am about forty-six.

Q. How long have you been going to sea?

A. Oh, about eight or ten years, something like that. I quit going to sea when I came up to Tacoma 14 years ago.

Q. You mean you have not been going to sea for the last 14 years?

A. No sir.

Q. And you went to sea eight years before that?

A. Yes. I have been working on vessels ever since that, working on ships.

Q. What business were you in before you went to sea?

A. Oh, I worked carrying pig iron and little things like that.

Q. You were just a common seaman, ordinary seaman?

A. Able seaman.

Q. You were mistaken when you testified that you were standing on the starboard side of the Kitsap?

A. You see—

Q. You were mistaken when you testified to that?

A. Yes sir.

Q. What speed was the Kitsap going when she started ahead after getting away from the dock?

A. I could not say what she was going at all. The only thing I heard was one bell; I never heard any jingle, nothing at all.

Q. In your experience in going to sea, what class of vessels did you ship on?

A. Sailing ships and steamers. I ran up the sound here three years and nine months as quartermaster on the steamer Mackinaw. One year I was on the San Bonita and she got wrecked and that was the last voyage to sea.

Q. You heard one bell how long before the collision, on the Kitsap?

A. It could not have been over—I don't believe there was a minute.

Q. You testified before the Inspectors didn't you?

A. Yes sir.

Q. You testified that no one was thrown over by the collision, before the Inspectors?

A. Nobody was throwed over? You mean nobody was throwed over?

Q. Did not you testify as follows:

“Q. Did you notice any one thrown down or topple over?”

“A. I never did.”

A. Certainly, I did not see nobody turned over. I was not in the way to see anything like that.

Q. You also testified in answer to the question:

“Q. Did she list enough so that you had to hold on from being thrown against the side of the house?”

“A. No, not enough for that.”

A. No, not enough for that, no.

Q. You now say you were on the port side of the Kitsap?

A. Yes sir.

Q. Close up to the pilot house?

A. Yes, right underneath the pilot house.

Q. How far away were you from the side of the vessel?

A. Well, it was very close, you know. It was a very short space.

Q. What is the width of the alleyway there?

A. I do not think over two or three feet. There is hardly room for two to pass to the pilot house.

Q. About two or three feet then?

A. Yes sir.

Q. No more than three feet?

A. Somewhere about that.

Q. Between the pilot house and the rail?

A. Yes sir.

Q. You are very positive about that?

A. Well, I think that is about all.

Q. You were standing close up under the pilot house?

A. Yes sir.

Q. Could you see the water as the vessel went through the water, at the side of the vessel from where you were standing against the side of the pilot house?

A. Yes, certainly I could.

Q. And you could see that the Kitsap was standing still when the collision occurred, by looking down at the water by the side of her?

A. Yes sir.

Q. And you are very positive?

A. I am. I looked over the rail to see the Indianapolis strike us.

Q. Now did you say what the engines of the Kitsap were doing when the collision occurred?

A. Backing.

Q. How did you know?

A. I could tell by the shaking of the vessel, the Kitsap was shaking heavily.

Q. Now how long had she been shaking?

A. Well, I could not tell. I made the statement four or five minutes.

Q. I ask you now.

A. She was shaking somewhere about four or five seconds. She made a good back shaking after I put my foot on the rail.

Q. She just virtually had got them going astern?

A. Got a good shake on her, full speed.

Q. The engines had been going astern four or five seconds before the collision occurred?

A. Yes sir.

Q. To produce that. What had she been doing?

A. They had been going ahead.

Q. What signals from a condition of going ahead, what signals did you hear?

A. I heard one bell to stop.

Q. Never mind telling what they meant, tell what you heard. You heard one bell.

A. Yes. Then I heard—

Q. Then you heard two bells?

A. Yes sir.

Q. Together?

A. Yes, one-two, then the jingle. Then she commenced to shake, then she gave the shake.

Q. Now when did you first hear the whistle of the Indianapolis?

A. Right after we made our turn and was coming on our course, just as we got around nicely I heard the toot the whistle of the Indianapolis.

Q. The toot?

A. Yes, the whistle.

Q. Just as you completed the turn?

A. Yes sir.

Q. How do you know that the turn was completed?

A. Well, I know the turn was completed by her going straight ahead. He must have been on his course to be going straight ahead.

Q. How far were you from the bow of the vessel?

A. Oh she has quite a space from forward there.

Q. About how far?

A. I did not measure it.

Q. Quess at it, approximately.

A. Oh, I should say 20 feet, I should think from the bow where the watchman was.

Q. Would not be more than twenty feet from the bow of the Kitsap to the pilot house?

A. You told me to make a guess.

Q. Make as good a guess as you can. That is your best guess, twenty feet?

A. Yes, I would not guess any more than that.

Q. Now you were looking right down over the bow?

A. Looking over the bow?

Q. Yes sir.

A. No, I was not looking over the bow.

Q. Do you know whether she is easy to turn, from the feeling of the swing of the vessel?

A. Yes sir.

Q. Then she swung pretty hard?

A. She came around.

Q. Did she come around hard or did she have a good list on her?

A. There was no list on her.

Q. Well, what could you tell it from if it was not from the list, if you could not see the bow, what could you tell she was swinging from if not from the list?

A. Well, a man can tell, he can see, she might come over a little.

Q. Then she did have a list on her?

A. As soon as she answers her helm she comes up again.

Q. And you saw the Indianapolis coming, and you thought it was a good thing to get away from that place?

A. Of course it was.

Q. And how far aft did you go?

A. I went right aft.

Q. How far?

A. Right—I could not go overboard.

Q. Did you go clear to the stern?

A. Yes, right to the stern. You see you got one thing and I got the other. I went right aft.

Q. Aft means as soon as you start aft.

A. Yes.

Q. Well how long were you clear there in the stern before the collision occurred?

A. I just got to the stern and put my foot up and looked over when she hit us right in the place where I left.

Q. You went right back there and got right in the stern and put your foot up and looked back to see what was going to happen?

A. Yes, and she hit right there—I wanted to have a look at it any way.

Q. A last look?

A. I suppose I would have got ashore all right anyway.

Q. When did you hear the bells that you have testified to relative to when you started back, was it before or after or at the same time?

A. No, the bells were before I started to run; the bells were rung before I started to run.

Q. How long before?

A. Oh, it could not be more than about three or four seconds, just as soon as the bells were rung I looked up.

Q. How long did it take you to go aft?

A. It did not take long to go aft in her, she is not a very big boat.

Q. How long?

A. You can go pretty speedy down those things.

Q. What did you do, did you run?

A. Of course I ran.

Q. Run as hard as you could?

A. Yes, I run pretty hard. Then I stopped aft. There is a ladder goes up on the upper deck and I stood right there, and put my head over the side to see the Indianapolis hit us.

REDIRECT EXAMINATION:

Q. (Mr. Merritt). Mr. Foster, when you heard the Indianapolis' whistle, first whistle, was it forward or aft of where you stood?

A. Right abreast of me.

Q. When you say the Kitsap had been backing four or five seconds before the Indianapolis struck, did you look at a clock or anything?

A. No, it just happened to me in my mind as I came running aft, it might have been a few more seconds.

Q. That was simply a guess.

A. That is a guess on it.

Q. Before you started back and before you seen the Indianapolis, you say you heard these bells?

A. Yes sir.

Q. And felt the shake?

A. Yes sir.

Q. Then you were back there and looked back, and it was after that that you came back?

A. Yes, and it was after the collision took place.

Q. (Mr. Bronson). I want to ask you if you did not testify before the United States Inspectors, when they were examining you relative to this collision, as follows:

“Q. When you started aft, how far back did you go before she struck?

A. Just at the aft part of the engine room when I heard the crash”?

A. The aft part of the engine room?

Q. Did not you testify just as I have read?

A. That is a mistake.

Q. You did not testify to that?

A. I could not tell the man that.

Q. You did not testify that way?

A. No sir, I did not testify that way.

Q. Then were you not asked this question: “Then she was backing the time it took you to get abaft the engine room” to which you answered “Yes sir”?

A. I answered that.

Q. But you will swear positively you did not testify before the United States Inspectors at the investigation—

A. Not to my memory that you first mentioned.

Q. At the investigation of the collision between the Indianapolis and the Kitsap, on the 16th of December, 1910, you did not testify—

A. I do not believe I did. I do not believe I mentioned that.

Q. You know whether you did testify to that or not. Say whether you did or did not?

A. I could not swear to that. I do not think I mentioned that, but the other one I did, that you read second.

Q. I will ask you if you did not also testify, "Were you looking at the water or the Indianapolis before she struck?" to which you answered "I seen the Indianapolis first and I started to run as soon as I seen the Indianapolis." You testified to that?

A. Yes, I testified to that.

Q. I want to give you full opportunity to consider your answer to this first question, whether when you started back, how far aft you got before she struck, and whether you answered, "Just at the aft part of the engine room, then I heard the crash"?

A. You have only a few steps—

Q. Did you testify to that or not?

A. I am telling you I won't swear to it. I do not believe that I said that.

Q. (Mr. Merritt). You were not on the dock where the engine was?

A. No, up on the—

Q. No way for you to say where you stood how far the engine room was back, was there?

A. No sir.

Q. (Mr. Bronson). But you do know, do you not, as a seaman, that the engine room is not in the extreme aft part of the vessel?

A. In the Kitsap it is pretty near aft; there is only one small cabin there at the aft end of it.

Q. From the extreme stern?

A. There is one small cabin between them.

Q. You noticed the further part of this question—I want to call your attention to it explicitly, the answer. I ask you if you made this answer before the Inspectors: "Just at the aft part of the engine room, then I heard the crash." You did not testify to that?

A. I do not remember that since; I do not know whether I testified to that or not.

(Testimony of witness closed.)

OTHO ANDERSON, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). State your full name?

A. Otho Anderson.

Q. Were you employed on the steamship Kitsap on December 14th, 1910, at the time of her collision with the Indianapolis?

A. Yes sir.

Q. What were you doing on her?

A. Firing.

Q. How long had you been firing on the Kitsap?

A. Since the 1st of October.

Q. Did you ever fire on her before?

A. No sir.

Q. Where were you from the time the Kitsap left the pier the second time in that afternoon of that day until the collision?

A. Well, I was down in the fire hold when she first started out.

Q. Down in the fire hold? Who else was in the fire room or the engine room?

A. The chief engineer.

Q. Any one else?

A. No sir.

Q. The fire room and the engine room were all in one room, were they not?

A. Yes sir.

Q. The fire hold is right within a few feet of the engine?

A. Yes sir.

Q. The engine is up above and the fire hold is down below?

A. Yes sir.

Q. There is a ladder in forward where you go down?

A. Yes sir.

Q. You say you were in the fire hold when you backed out?

A. Yes sir.

Q. Did you hear the bells given to back out?

A. From the dock.

Q. When you backed away from the dock?

A. Yes sir.

Q. What bells were given?

A. Why, we were working her when she was at the dock and we got three bells to back up.

Q. How did they come?

A. Came one and two to back up.

Q. The first bell meant what?

A. Stop.

Q. Stop her working?

A. Yes.

Q. And then the two to back up.

A. Yes sir.

Q. What did the engineer do when he got these bells, did he answer them?

A. He stopped her and backed her up.

Q. The Kitsap was an oil burner?

A. Yes sir.

Q. How many burners has she?

A. She has two.

Q. How many were burning at this time?

A. One.

Q. How high did you have them turned up?

A. I had one running very easily.

Q. How long did you stay in the fire hold?

A. I stayed in the fire room until we got backed out and got a bell to come ahead.

Q. Now a bell to come ahead, what bell did you hear to come ahead?

A. One bell; one to stop and one to come ahead.

Q. Then what did you do?

A. Then I came up out of the fire room and was looking out of the port on the port side.

Q. There is a port just opposite the engine and the fire hold on this deck, on the port side?

A. Yes sir.

Q. You say you stayed there?

A. Yes sir.

Q. Now what was the next bell, if any that you heard?

A. The next bell I heard was one to stop.

Q. And what did the engineer do, if anything?

A. The engineer stopped the engine.

Q. What was the next that you heard?

A. I heard two bells and a jingle.

Q. What did the engineer do in answer to those bells?

A. Stopped and backed her up full speed.

Q. How did you know he was backing up full speed?

A. Because I could see the engine.

Q. You could see the engine?

A. Yes sir.

Q. Anything in her motion that you could tell?

A. Yes, she was backing, she was shaking all over.

Q. Did you hear the Indianapolis' fog whistle?

A. I heard her whistle; I did not know whether it was the Indianapolis.

Q. You heard a whistle?

A. Yes, I heard a whistle.

Q. When you got these bells to back up what did you do?

A. I stayed there in the port.

Q. Did you at any time look at the water?

A. I was looking over the side after she was backing a little while.

Q. What did you see?

A. I seen her back and I seen the water from her wheel.

Q. The white foam you mean?

A. The white foam.

Q. What did you do after that?

A. I started to go down in the fire hold.

Q. Did you see the Indianapolis when she struck?

A. Just as I got to the top of the fire hold I seen the people running back, and seen the Indianapolis' bow come in through the side of the Kitsap.

Q. Do you know how the Kitsap was running before you got this stop bell, from the time you went ahead?

A. She was running very slow.

Q. How could you tell that?

A. Because I could see the engine. I had on one burner very easy and kept the steam up.

Q. You say you could see the engine?

A. Yes sir.

Q. Could you tell from the looks or the motion of the engine how she was running?

A. Yes, I saw the engine turning over.

Q. After the collision what bells did you hear?

A. After the collision I heard a bell to stop.

Q. Anything else?

A. No sir.

Q. Now, had there been any bell from the time you went ahead until you got this stop bell, to hook on, as you call it?

A. No sir.

Q. About where was this port that you say you were looking out of?

A. It was just about amidships.

Q. Where did you see this foam with reference to where you stood?

A. Just even with the port.

Q. And that was while you stood there?

A. Yes sir.

Q. And before the Indian struck?

A. Yes sir.

CROSS EXAMINATION:

Q. (Mr. Bronson). How long was it before the Indianapolis struck you that you saw this foam?

A. Well, it was two seconds; I just got turned around.

Q. You do not ordinarily see the foam coming ahead until the vessel has sternway on her, do you?

A. No sir, never do.

Q. That would indicate to your mind that the Kitsap had sternway on her?

A. Yes sir.

Q. At least two seconds before the collision she was going astern fast enough so that the foam would come half way up to her bow?

- A. Yes sir.
- Q. How long have you been a fireman?
- A. Five years.
- Q. Do you ordinarily keep track of the bells?
- A. Yes sir.
- Q. Every day, on ordinary trips?
- A. Yes sir.
- Q. So that you could tell me what bells were used on the boat?
- A. Yes sir.
- Q. On any trip that you took?
- A. Yes sir.
- Q. Or a week ago?
- A. Well, I could not go back a week.
- Q. Well, you can go back now to this time in December?
- A. Certainly, I know them.
- Q. In other words you remembered the bells before the collision took place?
- A. Yes sir.
- Q. So that now you recall them?
- A. Yes sir.
- Q. What impressed the bells upon your mind before the collision took place?
- A. Well, I was kind of looking out because we had had an accident before that.
- Q. You were looking out for—
- A. Well, I thought may be we would be running into something else.
- Q. What steam did you carry, Mr. Anderson, when you went out the first time?
- A. Well, about 175.
- Q. What is your normal rating? What is your normal steam pressure?
- A. 275.
- Q. 275?
- A. Yes sir.
- Q. When you went out the first time and met the first collision, you only had 175 pounds of steam?
- A. That is all.

Q. You had 175 pounds?

A. Yes sir.

Q. Was that what you expected to carry during the day?

A. Yes sir.

Q. Well, as a matter of fact, don't you carry 175 pounds ordinarily? You do not carry 275 right along, do you?

A. No sir. We carry about 175 to 180.

Q. You can carry 275—that is what you are allowed?

A. Yes sir.

Q. Then you were carrying your normal steam pressure?

A. Yes sir.

Q. What pressure did you carry when you went out the second time?

A. About the same.

Q. About 175?

A. Yes sir.

Q. How long did you lay at the dock?

A. After we came back?

Q. Yes.

A. Well, I should judge we laid there about five minutes.

Q. Did you shut your burners off entirely while lying at the dock?

A. No sir. Not when we are working ahead easy.

Q. Just kind of loafing along?

A. Yes.

Q. How long would you say had elapsed between the time when you left the dock and the collision with the Indianapolis?

A. Oh, I should say four or five minutes.

Q. Would you have burned one burner during your trip?

A. No sir, I would have burned two.

Q. You would have burned two?

A. Yes sir.

Q. When would you put the two on?

A. After we got full speed ahead bell.

Q. It would not be necessary to carry more than one burner until you got full speed ahead?

A. No sir.

Q. What is the difference in speed between half speed and full speed ahead, is it a half?

A. What is the difference?

Q. Yes.

A. I don't quite know what you mean.

Q. Is half speed half of full speed, approximately?

A. Supposed to be, yes.

Q. What relative quantity of steam is consumed? Does full speed take twice as much as half speed or more?

A. We keep the same steam.

Q. I mean the consumption of steam or the evaporation of water, whether it does not take more than twice as much for full speed as it does for half speed?

A. Yes sure.

Q. Pretty easy to keep her on half speed, is it not?

A. Yes sir.

Q. How many revolutions was the engine making?

A. I could not say how many.

Q. You could not tell accurately?

A. No sir.

REDIRECT EXAMINATION:

Q. (Mr. Merritt) You stated that you were watching out for fear that you might have another collision. Had anything been done or said that made you watch out?

A. No sir, nothing said.

(Testimony of witness closed.)

Seattle, Washington, March 18, 1911.

Continuation of proceedings pursuant to adjournment.

PRESENT: Mr. Merritt, for the libelant.

Mr. Bronson, for the claimant.

MR. S. B. GIBBS, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. What is your business?

A. Agent and surveyor for the San Francisco Board of Marine Underwriters.

Q. How long have you been engaged in that business?

A. A little over two years.

Q. You reside in Seattle?

A. I do.

Q. You represented the Underwriters in the matter of the collision between the Kitsap and the Indianapolis?

A. I did.

Q. After the collision, on behalf of the Underwriters, did you make any contract for salvage of the steamer?

A. I did.

Q. With whom was that contract made?

A. The Elliott Bay Dry Dock Company.

Q. What was the contract?

A. The contract was—

MR. BRONSON: Haven't you the contract itself?

A. I think we have it right here.

Q. Have you a copy of the contract that was entered into?

A. I have.

MR. MERRITT: We offer a copy of the contract in evidence.

MR. BRONSON: We reserve a formal objection to it.

MR. MERRITT: Not on the ground that it is not the best evidence?

MR. BRONSON: No.

Paper marked libelant's exhibit "C," filed and returned herewith.

Q. This contract is dated December 27th, 1910. I will ask you what efforts were made, after the sinking of the Kitsap, toward having her salvaged?

A. Captain Genero, with a diver, went out there and with a barge and tow boat, swept for the vessel and located her.

Q. What depth of water did they locate her?

A. I think it was 240 feet.

Q. Off the docks at Seattle?

A. Yes sir, off the Colman dock.

Q. Go ahead and state what was done.

A. They swept for the vessel and got a wire fast to her and made a couple of buoys fast to a wire, and then we discussed the advisability of attempting to raise her ourselves. And we figured that it was going to cost so much that it would hardly pay to attempt it. Shortly afterwards Mr. Swanberg

of the Elliott Bay Dry Dock Company called at the office and said that he would like the job of raising the vessel. After some discussion he agreed to raise her as per this contract.

Q. I will ask you whether or not in your opinion that contract is a fair and reasonable contract for the raising of that vessel in the condition in which she was found?

A. I think it is.

Q. She was raised afterwards?

A. She was.

Q. I will ask you, did you keep track of what was being done toward raising her?

A. I did.

Q. I will ask you whether or not reasonable diligence was exercised in prosecuting the work of raising her?

A. I think it was.

Q. She was afterwards raised and towed to West Seattle, was she?

A. Yes sir.

Q. And then placed on the dry dock?

A. Yes sir.

Q. The contract I see provides for payment of sixty per cent of the difference between the sum of thirty-five thousand dollars, the value of the vessel when salved, for salvage. Now has the underwriters obligated themselves to make this payment, to pay the amount provided for there?

A. Up to the present time—

Q. This thirty-five thousand dollars. I say have they agreed to pay this amount?

A. I think they have.

Q. The entire amount has not been paid yet?

A. No sir.

Q. But they have agreed to pay it?

A. I think they have.

Q. Now were you one of the surveyors who surveyed the vessel when she was raised to the dock?

A. Yes sir.

Q. Who were the other surveyors?

A. Mr. Spencer.

Q. Did you make a survey of her for damages caused by the collision?

A. Yes, caused by the collision and by submersion.

Q. Have you a copy of these specifications?

A. I have.

MR. MERRITT: I offer in evidence the specifications identified by the witness.

MR. BRONSON: Until we have an opportunity to examine the specifications, I object to their introduction on the ground that they are incompetent, irrelevant and immaterial. I object at this time for the reason that it may be shown—I do not say that it will be—that there was work included in these specifications which would be in excess of repair or replacing the damage.

Paper marked libellant's exhibit "D," filed and returned herewith.

Q. What was done captain, with reference to having these repairs and replacements made?

A. Tenders were called for for repairs from Mitchell & Lonseth, shipwrights and calkers; from the Heffernen Engine Works; from the Moran Company, and the Hall Brothers Marine Railway & Ship Building Company, and from the Elliott Bay Dry Dock Company.

Q. Were tenders received from these various people?

A. Yes sir.

Q. State which, if either, of these tenders were accepted?

A. The tender of the Elliott Bay Dry Dock Company.

Q. For what amount?

A. \$12,313.

Q. State whether or not that was the lowest tender?

A. It was.

Q. And what was the amount of the other tenders?

A. Mitchell & Lonseth was \$19,180. Heffernen Engine Works \$22,044. Hall Bros. Marine Railway & Shipbuilding Company \$23,740. Moran Company \$23,000.

Q. State whether or not, in your opinion, the tender which you accepted, was a reasonable tender?

A. A very reasonable one.

Q. When does the tender, which was accepted, provide for completion of the work?

A. The work to be done in 60 working days.

Q. From what time?

A. From the date of the awarding of the contract.

Q. Do you remember when that would make the delivery?

A. No, I do not.

Q. You have the original tender there?

A. Yes sir.

Q. You may read it to the Commissioner.

A. "Steamer Kitsap. W. L. Gazzam, President Kitsap County Transportation company. We beg to submit the following proposal for repairs and furnishing of equipment for said steamer, as per your specifications and blue prints for the net sum of \$12,313, and will require sixty working days to complete same. Yours truly, Elliott Bay Dry Dock company. J. F. Swanberg, President."

Q. Do you know when this contract was accepted and work commenced?

A. I think that was accepted, but I am not quite sure, whether accepted the day the contract was signed or not or the next day.

Q. What day was that?

A. That was February 18th.

Q. February 18th, 1911?

A. Yes sir.

Q. Work was to be completed and delivery of the vessel made in sixty days?

A. Sixty working days.

Q. Now I will ask you, captain, whether or not these specifications called for any repairs or replacements which were not caused or resulted from the collision?

MR. BRONSON: I object on the ground that it is not shown that this witness knows or can state whether or not all of these repairs were necessitated by the collision.

A. To the best of my knowledge the specifications simply covered the repairs that were caused by the collision and the submerging.

Q. You surveyed the vessel as you found her?

A. Yes sir.

Q. Could you tell from your survey and examination of her what damages were due to the collision and what due to submersion?

A. I think I could.

Q. And the specifications which you prepared of these damages were such as you found from examination had been caused by the collision and submersion?

A. They were.

Q. Now it is a fact, is it not, captain, that these specifications call for some slight changes from what the Kitsap was prior to the collision?

A. They did.

Q. Now state just what these are, and the reason for making these changes?

A. There is a change made in the seats of the Kitsap. The understanding was that the house was to be renewed the same as the Hyak's. And Mr. Gazzam wanted some changes made, that is he wanted the Kitsap the same as the Hyak, and going over the thing carefully, we found that there was an advantage in favor of Swanberg who was going to make a bid on the repairs, to make these changes. The seats on the Kitsap were very expensive seats, the outside seats, and Gazzam agreed to have plain board seats. And there was quite a lot of hard wood fittings in the Kitsap, which they agreed to dispense with in the way of doors and stair railings and some changes in the house, and as Swanberg saw that it would be to his advantage to build the house the same as the Hyack's, instead of renewing it as it was before, he agreed to it.

Q. So that in some respects the specifications called for some changes from what the Kitsap was before? I will ask you whether or not, in your opinion, these changes increased the expense of repairs and replacements over what they would have been if they had followed out the repairs or replacements as she was before the collision?

A. I do not think they would.

Q. This hard wood, do you know what kind of wood that was?

A. No, I do not remember what kind of wood it was.

Q. The Hyak that you speak of, was a sister ship, practically of the Kitsap?

A. Yes sir.

Q. Now then, in making your survey, I will ask you whether or not anything was allowed for depreciation of any part of the vessel on account of the collision or submersion?

A. There was.

Q. What?

A. An agreement of \$1500 for depreciation of the boilers due to submersion.

Q. What was the reason for that allowance?

A. There was an agreement entered into between Mr. Gazzam and the Elliot Bay Dry Dock company and myself, that in case of any dispute or misunderstanding, that we would agree to abide by the decision of another surveyor mutually agreeable to all three, and Mr. Evans was the man selected.

Q. Who is Mr. Evans, if you know?

A. He represents the government I believe, looking after—

Q. Represents the government in looking after the construction of some government vessels at the Moran dock?

A. Yes sir.

Q. And he is the man you agreed on?

A. Yes sir.

Q. And he is the man who made this allowance of \$1500?

A. He was.

Q. Is the 60 days for the completion of these repairs and replacements, in your opinion a reasonable time in which to do the work?

A. Yes, I think it is.

Q. I will ask you generally, captain, whether or not in your opinion, reasonable diligence has been exercised in raising and repairing and replacing the vessel in the condition she was before the collision?

A. I think there has, sir.

CROSS EXAMINATION:

Q. (Mr. Bronson). You are the representative, captain of the Underwriters on the Kitsap, are you?

A. I am.

Q. And you are directly interested in the result of this case in that respect?

A. I am.

(Testimony of witness closed).

W. C. GILBERT, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). Where do you reside?

A. 2833 Thirty Fourth Avenue South, Mt. Baker Park, Seattle, Washington.

Q. Were you a passenger on the Indianapolis on December 14th, 1910, at the time she was in collision with the Kitsap?

A. I was.

Q. Where did you board her?

A. I boarded her at Tacoma.

Q. Where did you sit in the Indianapolis on that trip?

A. I sat right at the engine room—in the smoking room compartment, engaged in playing cards.

Q. Was there any opening between the engine room and the room where you were?

A. There was.

Q. Which side of the vessel were you on, the right hand or left hand side?

A. When I went down there she was still tied at the dock, and the side we were on was toward the water, away from the dock.

Q. Now did you stay there and play cards all the way over?

A. Yes sir.

Q. Did you know of the collision with the Kitsap?

A. I did.

Q. Prior to the collision with the Kitsap, did you notice any difference in the motion or vibration of the Indianapolis, after she had left Tacoma harbor?

A. Ask that again?

Q. I say, prior to the collision with the Kitsap, and after you had left Tacoma Harbor, did you notice any difference in the motion or vibration of the Indianapolis?

A. I did not.

Q. After you left Tacoma harbor prior to the collision, did you hear any bells in the engine room?

A. I did not.

Q. What called your attention to the collision?

A. Why, being knocked out of the chair and hearing the grating of the collision.

Q. That was the first you knew of it?

A. That was the first I knew of it.

Q. After the collision did you hear any bells in the engine room?

A. I did hear bells.

Q. Do you know what kind of weather it was on the trip over?

A. It was foggy at the dock in Tacoma, and foggy half way over, and about half way over the fog cleared, cleared for a few minutes, I should imagine for about four or five minutes, and then was as dense as ever in fact more dense.

Q. How was it as you came into Seattle harbor?

A. So dense that you could not see your hand in front of you, hardly.

CROSS EXAMINATION:

Q. (Mr. Bronson). You went right down in the smoking room when you went aboard?

A. Yes sir.

Q. When did you start playing cards?

A. Before the boat started on the trip to Seattle.

Q. How many were there playing?

A. Four.

Q. What game?

A. Whist.

Q. Bridge whist?

A. Yes.

Q. Does that game exact any considerable amount of attention from the player?

A. Well, not necessarily—just a matter of holding trumps and playing them, that is about all.

Q. Well, I understand you, Mr. Gilbert, that this is not

a game that you pay very much attention to, does not absorb your attention very much?

A. Well, I don't know how to answer that.

Q. Well, you know what I am after. I want to know whether or not that game is one that you would pay enough attention to so as to preclude your paying attention to other things, or whether you have your attention on it so little that you are hearing everything going on around you?

A. The game was not for anything at all.

Q. I am not asking about any violation of the law.

A. I did not understand that you meant it that way. What I meant is there was nothing about it to make one pay such close attention. We were just playing to pass the time.

Q. I understand you to say that there was no change in the vibration of the boat, nor any bells prior to the collision?

A. No sir.

Q. And the first thing you noticed was being knocked out of your chair there by the collision?

A. Yes sir.

Q. I understood you to say that the fog was dense all the way over except for about four minutes?

A. Half way between Tacoma and Seattle.

Q. For about four minutes?

A. For four or five minutes.

Q. Where was that?

A. I could not say where it was, it was about half way between Tacoma and Seattle.

Q. And it was so thick that you could not see your hand before you. You mean by that that it was a very dense fog?

A. It was.

Q. You could not see the man on the lookout in front?

A. Well, I was not in a position to see the man in front.

Q. Where were you?

A. Well, I was not in a position to see him. After the accident we all came up, of course.

Q. You are speaking then of the condition of the fog after the accident?

A. I could look out over the side there is a port hole in

the side of the ship, and we could look out and see the fog right along.

Q. There were no objects out in the fog to gage its density by?

A. No sir.

Q. As a matter of fact you did not really know how dense it was previous to the collision, do you?

A. Oh yes, I know how dense it was.

Q. You were sitting in the smoking room playing cards, and perhaps the smoke was so thick you thought it was fog?

A. No, the side of the ship was open there is a hole there in the side for them to pull in freight I guess and we were right by the side of that and that was open. And besides that there are windows there that you could look out through.

Q. You did not hear any fog horn on the Indianapolis?

A. Yes, she blowed her whistle right along.

Q. All the way over?

A. When the fog cleared then she stopped blowing the whistle.

Q. Otherwise she blew it right along?

A. Yes, as far as I can recollect.

Q. About how often would she blow it? Do you know what the fog interval is?

A. She was blowing about three a minute out of Tacoma.

Q. Is that the ordinary fog signal?

A. I could not tell, sir.

Q. Do you travel on the boats very much?

A. Yes.

Q. Don't you take notice how they blow fog signals?

A. I have not rode when there have been any fogs.

Q. You have not traveled on the boats in fogs?

A. I have a few times, but never paid much attention.

Q. Well, don't you know about what the fog signals are? You have heard vessels blowing them in the fog?

A. That is the only fog signal I know, the blowing of the whistle.

Q. Do you know about the way they blow them?

A. Yes.

Q. Well, what?

A. About two or three a minute.

Q. She was blowing a fog signal just about as vessels ordinarily do, as you have heard them?

A. Yes sir.

(Testimony of witness closed).

URI SEELEY, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). What is your business?

A. Steamboating.

Q. You reside in Seattle?

A. Yes sir.

Q. How long have you been engaged in steamboating in Seattle?

A. About twenty years.

Q. And are you familiar with the reasonable value of the use of vessels in Seattle, such as the Hyak and Kitsap, from December last until May this year?

A. Yes sir.

Q. I will ask you what, in your opinion, would be the reasonable value of the use, per day, of the Hyak during that period?

A. One hundred and seventy five dollars a day.

CROSS EXAMINATION:

Q. (Mr. Bronson). Did you have occasion to charter the Hyak now and then?

A. Yes sir.

Q. Do you pay \$175 a day?

A. Guarantee them \$175 a day.

Q. That is for what run?

A. Between here and Tacoma.

Q. That is one of the most valuable runs there is?

A. No, there are several very good runs.

Q. You charter her as a substitute for the Flyer?

A. Yes sir.

Q. You would not pay \$175 a day for her on the Paulsbo run?

A. I do not know anything about what the business is, I am not operating there.

Q. Don't you know enough, Mr. Seeley, to know this without knowing what it is, don't you know enough to know about the route to know that you would not expect to earn \$175 a day on the Paulsbo run?

A. I could not tell you what the business is.

Q. Don't you know that it would not be that much?

A. I could not tell you without knowing more about it.

Q. Well, the figures you gave are for the purpose of charter for the Tacoma run in place of the Flyer?

A. Yes sir.

Q. How often do you do that?

A. Sometimes twice a month and sometimes ten days at a stretch, sometimes once a month.

Q. For a day at a time?

A. Sometimes a month, owing to whether we are laid up for that time.

Q. Has the Flyer been laid up since the 1st of December of last year?

A. Yes sir.

Q. How long?

A. Well, the 7th or 8th of this month, and we were off in December I think two days.

Q. That would be all?

A. Yes, all for that time.

REDIRECT EXAMINATION:

Q. (Mr. Merritt). You have frequently chartered the Hyak haven't you?

A. Yes sir.

Q. And what have you paid for her charter?

A. We have always guaranteed \$175 a day. If their receipts went above that that was theirs; if it went below that we made up the difference.

Q. Do you ever charter her for a single run?

A. Yes, there are times when we charter her for a single run and practically do not use her at all, and we pay \$75 for a round trip.

Q. (Mr. Bronson). These figures of \$175 did not con-

template your paying for the crew or fuel or anything of that kind?

A. No sir.

Q. That is you pay \$175 a day and they pay all their operating expenses.

A. Yes sir.

(Testimony of witness closed).

A. Hazlemark, by agreement of counsel, was sworn to act as interpreter.

YENS TOTLAND, a witness called on behalf of the libelant, being duly sworn, testified through the interpreter as follows:

Q. (Mr. Merritt). Were you employed on the Kitsap on December 14th, 1910, at the time she was in collision with the Indianapolis?

A. Yes sir.

Q. How long had you been so employed on the Kitsap?

A. From the first of October.

Q. In what capacity were you employed on the Kitsap at that time?

A. I was on the lookout.

Q. What was his rating, what was his position on the vessel at that time?

A. Deckhand.

Q. How long had he been going to sea or working on steam vessels?

A. He says he has been on steamers for ten months, and he had been on sailing vessels since he was 12 years old.

Q. How old is he now?

A. Thirty one.

Q. What other steam vessels had he been on before he was on the Kitsap?

A. On the Hyak.

Q. Where had he been running?

A. Paulsbo.

Q. What position had he on the Hyak?

A. Deckhand.

Q. Now where was he standing on the Kitsap, from the time she pulled out from the south side of pier 4 in the after-

noon of December 14th, 1910, up until the time of the collision with the Indianapolis?

A. He says he stayed on the bow.

Q. Did he stand there all the time?

A. Yes sir.

Q. Ask him when he first heard the Indianapolis' whistles after the Kitsap left the dock at this time?

A. He says on the port bow and a little ahead.

Q. Ask him if he ever heard the Indianapolis' whistles on the starboard bow?

A. No sir.

Q. Ask him if he reported in any way to the officer on the bridge hearing the Indianapolis' whistles?

A. Yes, he says he pointed with the hand, and there were several others pointed with the hand the direction of the whistle.

Q. Did he hear any bells given to the engine room on the Kitsap, after she pulled away from the dock at this time?

A. He says that he heard the bell signals, but he could not tell what they were.

Q. When did he first see the Indianapolis?

A. He says he saw her a few feet from the side of the boat before she hit.

Q. Was she forward or aft of where he stood when he first saw her?

A. A little aft of where he stood.

Q. Ask him if he knows how the Kitsap was running at the time of the collision?

A. He says she was dead still.

Q. Ask him if he knows how the Indianapolis was running at the time he saw her?

A. Pretty fast, he says.

Q. Ask him if he saw or heard anything that would indicate to him that she was running fast?

A. He says he heard a noise in the water and saw the foam under the bow.

Q. Ask him to indicate on this sheet of paper the relative positions of the two vessels when he first saw the Indianapolis? (Witness does so).

Q. Ask him if he has marked on the diagram which he has made "K" to represent the Kitsap?

A. Yes sir.

Q. And ask him to mark the Indianapolis with an "I" on the diagram.

(Witness does so).

Q. Ask him to mark on the Kitsap where the Indianapolis struck her?

(Witness does so).

Q. And ask him if the V on the port side of the Kitsap as indicated on this diagram, indicates the place approximately where the Indianapolis struck?

A. Yes sir.

MR. MERRITT: I offer the diagram in evidence.

Paper marked libelant's exhibit "B," filed and returned herewith.

CROSS EXAMINATION.

Q. (Mr. Bronson). Ask him to indicate with an X the position of the Indianapolis' whistle sounded when he first heard it from the Kitsap?

(Witness does so).

Q. Ask him to mark the point with a W to indicate where she whistled?

(Does so).

Q. Now the point marked W indicates about the position that the sound of the Indianapolis' whistle first came from?

A. Yes sir.

Q. And when he heard it he pointed toward the sound of the whistle?

A. Yes sir.

Q. Ask him how far the Indianapolis was away from him when he first saw her?

A. I cannot tell.

Q. Cannot he give any idea at all?

A. He says he cannot tell, but it looked to him like it was about 25 feet.

Q. Ask him if he can speak the English language?

A. Very little, he says.

Q. How long was it after he saw the Indianapolis was it that the collision occurred?

A. He says he cannot say in time for that; he cannot say what time.

Q. Ask him if he was looking into the fog at the place the Indianapolis emerged?

A. Yes, he says that he did, because everybody was looking for that place where they heard it.

REDIRECT EXAMINATION:

Q. (Mr. Merritt). Ask him if Captain Hanson of the Kitsap speaks his language?

A. Yes sir.

Q. Ask him what kind of weather it was?

A. He says it was calm and a heavy fog.

Q. Ask him if the Kitsap was sounding any fog signals?

A. He says all the time.

Q. When he says all the time, ask him whether he means continuously or intermittently?

A. He says common fog signals.

Q. How often?

A. He says between one and two and three seconds.

(Testimony of witness closed).

W. L. GAZZAM, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). Your name is W. L. Gazzam?

A. Yes sir.

Q. You are President of the Kitsap County Transportation company, the libelant in this action?

A. Yes sir.

Q. And have been for several years?

A. Yes sir.

Q. Do you know the time that she was in collision with the Indianapolis?

A. Yes sir.

Q. After she was sunk in that collision, state what was done with reference to having her raised?

A. I was asked by Captain Gibbs to consent to their dragging for her and locating her, and I very cheerfully gave

the consent, because I figured that she was in such deep water that we did not care to bother about trying to raise her, and Captain Gibbs said there was a possibility of raising her. So he took steps and employed a diver and a barge, and Captain Genero, his deputy. They spent I thing, either one or two days in the bay, and reported that they had located her, and I think they had attached a cable, it looked very much to me that way, because I was there in a small boat once or twice around an object which they said was the Kitsap. They buoyed that, and then later on I understood that I was needed at a conference at Bogle & Merritt's office with a view of letting a contract to salve her to the Elliott Bay Dry dock company.

Q. Was that contract let?

A. I understood so at the time, although I did not sign it. I authorized Judge Bogle and yourself to sign anything that was necessary to sign for us.

Q. And libelant's exhibit "C" is a copy of that contract?

A. Yes sir.

Q. Now Mr. Gazzam, I see in there a valuation of \$35,000 of the Kitsap is given what is called an agreed valuation. State what that agreed valuation is?

MR. BRONSON: I do not see how that is competent or material.

A. The agreed valuation for insurance purposes. When we insured the Kitsap she was valued at \$35,000 for insurance purposes, and placed a policy of \$24,000 on her against what is known as the full English form, which provides that in the event I do not carry thirty five thousand dollars—

MR. BRONSON: I object to any oral statement as to the contents of the policy.

MR. MERRITT: We will not ask that.

Q. I will ask you this question, and you can object if you want to on the ground that it is leading: The fact is that you insured her for \$24,000 and carried \$11,000 yourselves of that?

A. Unless she was a total loss.

Q. In that proportion?

A. Yes, unless she was a total loss.

Q. Is this thirty five thousand dollars the actual value of the ship?

A. No sir.

Q. What was her reasonable value?

MR. BRONSON: I object as incompetent, irrelevant and immaterial.

A. In the neighborhood of fifty thousand dollars. I could give you the exact figures by referring to the books, but it was in that neighborhood.

Q. Now this contract provides for payment in case of successful salvage, sixty per cent of the salvage value of the ship, to be determined by deducting from the sum of thirty five thousand dollars, the cost of repairs and replacements. Do you know what contract was made for the repairs and replacements?

A. Yes, I opened the bids myself, and I knew the form of contract, and let the contract.

Q. That contract was as Captain Gibbs testified, for twelve thousand and odd dollars?

A. Yes sir.

Q. Then the amount of salvage that the salvors would be entitled to under the contract, would be sixty per cent of the difference between the twelve thousand and odd dollars, and the thirty five thousand dollars?

A. With the exception of fifteen hundred dollars which we were allowed for submersion of the boiler, which cannot be replaced nor repaid.

MR. BRONSON: That is not in the contract.

A. That was agreed upon by arbitration, also some extras that were not included in the specifications at the time but which developed, captain Gibbs had left out of our specifications, and the salvors will have to stand, but which is nominal. I do not recollect any particular item, but there were a few items.

Q. Then with the exception of the few nominal items of extras, the amount which the company is obligated to pay for salving, is the difference between thirty five thousand dollars and the bid and this fifteen hundred dollars?

A. Yes sir.

MR. BRONSON: I object as incompetent, irrelevant and immaterial, not supported by the evidence in the case, so far introduced.

Q. What was this \$1500 allowance?

A. It was an allowance for submersion of the boiler for the period of time it lay at the bottom of the water, and it could not be covered by repairs or replacement that we are now able to make.

Q. I will ask you whether or not in your opinion this contract for salvage was a reasonable contract?

A. A very reasonable one.

Q. She was afterwards raised, was she not?

A. Yes sir.

Q. Towed to West Seattle, and then placed in the dry dock?

A. Yes, she was not raised above the water. She was raised so that she might be slung beneath the dry dock and carried to West Seattle. At West Seattle she was raised above the water.

Q. And afterwards placed in the dry dock?

A. Yes, in the East Waterway.

Q. Was there a survey had of the vessel?

A. Yes sir.

Q. To ascertain the damage caused by the collision and submersion?

A. Yes sir.

Q. Were you present when that survey was made?

A. Yes, on behalf of the owners of the vessel I was present at that survey.

Q. Showing you libelant's exhibit "D," being specifications for repairs to the steamship Kitsap, I will ask you whether or not the repairs and replacements shown in that exhibit are such repairs and replacements as were made necessary by reason of the collision and submersion?

A. Yes sir.

Q. It is a fact, is it not, that some changes were made in these specifications from the condition of the vessel prior to the collision?

A. Yes sir.

Q. What were these changes?

A. Changes in her furnishings.

MR. BRONSON: I do not think I shall attempt to take up anything in that connection.

Q. State what the changes were and the reasons for making them?

A. Well, the two items that I recall distinctly was the elimination of the hard wood doors and windows. The changes to similar wood to that in the Hyak, and also the elimination of the hand made settees around the Kitsap on the passenger deck, and the replacement by a plain board seat, hung with galvanized fastenings, so that they can be put up against her. There were numerous other changes that were made, such as the acceptance of some saved stuff from the Kitsap, which I could have demanded new for, but did not demand new. In consideration of my waiving these things, the insurance companies and the salvors yielded a few more chairs of a different pattern in the furnishings and a change in the upper house from the Kitsap's house to the Hyak's house, at I believe no more expense than it would have cost them in rebuilding the house on the Kitsap, because they are practically sister ships.

MR. BRONSON: Did I understand you to say that the changes amounted to two thousand dollars, which were added on to the Kitsap?

A. I said I thought he saved that, saved them two thousand dollars, Mr. Bronson. The difference between what it would have cost them to build the work of Australian Rosewood of which the Kitsap had been built originally. There was no more expense added, in my judgment on the furnishings to the house on the Hyak than there would have been to the Kitsap if you had taken them as they were originally of Rosewood. I said I saved the insurance companies and the salvors about two thousand dollars by taking off these changes from the plans and specifications of Gibbs.

Q. How much, if you know, did the insurers put into the reconstruction of the Kitsap, in the particulars requested by you, in exchange for these things which you released them from, and above what they would have expended?

A. I do not think they put in a single dollar more than they ordinarily would have expended on the Kitsap.

(Witness excused from the stand temporarily).

ROLLIN SANFORD, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). You reside in Seattle, do you?

A. Yes sir.

Q. What is your business?

A. Banker.

Q. I show you these photographs, Mr. Sanford, and ask you if you know what they are?

A. This one is a picture of the Kitsap as she lay on the beach at West Seattle.

Q. After she was raised in December or rather January, 1911? After the collision with the Indianapolis?

A. Yes sir.

Q. Did you take that photograph?

A. Yes sir.

Q. This was made at West Seattle after she had been taken over to the dry dock?

A. Yes sir.

MR. MERRITT: I offer this photograph identified by the witness in evidence.

Photograph marked libelant's exhibit "E," filed and returned herewith.

Q. I show you this other photograph and ask you what it is?

A. This picture was taken before that one, and is really an enlargement of this cut. This picture was taken from the corner of this scow, with the camera tilted down so as to get it as large as possible, as large a view as I possibly could get.

Q. The one you are now referring to has been marked for identification libelant's exhibit "F," as being an enlargement of the cut shown in exhibit "E?"

A. This is not an enlargement, it is a separate photograph. This picture "E" was taken from the corner of the scow.

Q. So that the record will be clear, this photograph "F"

was taken from the corner of the scow shown in the picture market "E?"

A. Yes sir.

Q. With the camera turned down to show the cut.

A. Yes, to show the cut as well as I could get it.

MR. MERRITT: I offer this identification in evidence.

Photograph marked libelant's exhibit "F," filed and returned herewith.

Q. I show you a photograph which has been marked "G" for identification, and ask you what that is?

A. This picture was taken in the dry dock, facing a little toward the stern, a little aft.

Q. Showing the same cut on the Kitsap?

A. Yes sir.

Q. And was taken by you?

A. Yes, it was taken by me.

Q. And about how long after these others were taken?

A. These were taken on Saturday, and this one was taken the following Thursday or Friday, I do not remember which.

Q. And the picture marked "H" for identification, what is that?

A. That is taken in the dry dock about 10' feet away from this picture, looking forward.

Q. From where you took "G?"

A. Looking forward into the cut.

Q. Of this same cut?

A. Yes sir.

Q. These cuts shown in these other exhibits are all the same cut shown in libelant's exhibit "E?"

A. They are all the same.

Q. And each of these photographs were taken by you?

A. Yes sir.

Q. And this last photograph "H" was also taken in the dry dock?

A. Taken in the dry dock.

MR. MERRITT: I offer these identifications "G" and "H" in evidence.

Photographs marked libelant's exhibits "G" and "H" filed and returned herewith.

(Testimony of witness closed).

W. L. GAZZAM, on the stand for further

DIRECT EXAMINATION:

Q. (Mr. Merritt). Were you on the Kitsap after she was towed to West Seattle?

A. Yes sir.

Q. Were you on her when she was in the dry dock?

A. Yes sir.

Q. And you were on her repeated after that time until she was surveyed?

A. Yes sir.

Q. You have seen the photographs which have been identified and offered in evidence as libelant's exhibit "E," "F," "G" and "H?"

A. Yes sir.

Q. Do you know whether or not these photographs correctly show the cut that was made in the Kitsap, at the dates they were taken?

A. Yes sir.

Q. Do you know whether or not there was any change in the cut or the damage, from the time the Kitsap was brought to the surface at West Seattle until she was placed in the dry dock for survey?

A. There was some change between this first exhibit "E" and exhibit "F," to what is shown in the dry dock.

Q. Just what were they?

A. Just a little clearing away of the rubbish and the timbers right around the particular neighborhood there but no disturbance of where the cut was made. It was simply cleared up, there was no disturbance at all of the timbers themselves.

Q. That would be the rubbish shown in libelant's exhibit "F" and the inside of the cut?

A. Yes, they necessarily had to clear this away. some of it to temporarily patch her and put canvas over and take her over to the dry dock and to float her. These first two exhibits

were made before any patchwork or clearance made. The last two were made after she had been covered with a temporary patch; there had been canvas put on to make a temporary patch, and that had been taken off.

Q. Now Mr. Gazzam, was there any change or any difference in the condition of the Kitsap or the cut in her, from the time she was brought to the surface at West Seattle until she was surveyed, except the clearing away sufficient to put these patches on?

A. No sir, I was particular and gave instructions not to clear any away. And I was very careful in seeing that my instructions were carried out.

Q. She was patched with canvas and plank and towed over from West Seattle to the East Waterway?

A. Yes, temporarily patched.

Q. Now I do not remember whether I asked you, but I ask you now whether or not in your opinion the contract for salving the Kitsap which was made was a reasonable contract?

A. It was, in my judgment.

Q. After the Kitsap was raised and placed in the dry dock was a survey made of her?

A. Yes sir.

Q. And were you present when that survey was made?

A. Yes sir.

Q. Have you been over the specifications offered in evidence, marked libellant's exhibit "D?"

A. Yes sir.

Q. And state whether or not any of the specifications there, other than those that you have referred to, called for repairs or replacements which were not made necessary by the collision and the submersion?

A. None to my knowledge.

Q. Now, what was done with reference to making these repairs or having the repairs and replacements made?

A. Bids were called for and a contract was made with the same parties that had salved her.

Q. You have heard Captain Gibbs testimony with reference to calling for bids, and the bids received, and the one that was accepted by you?

A. Yes sir.

Q. Is that testimony correct?

A. Absolutely correct.

Q. I will ask you whether or not, in your opinion, the bid that was accepted, was a reasonable bid for the work?

A. It was an extremely low bid in the judgment of everybody that heard of the bid and of those that were interested.

Q. I will ask you whether or not the time provided in the bid, sixty working days, for making these repairs and replacements, was in your opinion a reasonable time in which to make them?

A. Yes sir. It was a reasonable time. I have one bid that called for twenty two thousand dollars and thirty five working days, by the Moran company, who stated that they had the men and the ability to work over time and that they thought that the thirty five days was an incentive to letting the contract to them, providing they had been the lowest bidder.

Q. I will ask you whether or not in your opinion, reasonable diligence has been used to raise and have the Kitsap repaired, since she was sunk?

A. I think diligence has been used at every point. The salvors were very patient and stuck to it, and other people, who were very practical men told me positively they did not think it was possible to raise her.

Q. Now, what if any expense has the company incurred with reference to having a survey made?

MR. BRONSON: I object as incompetent, irrelevant and immaterial.

A. We have had to employ a surveyor—

Q. I want to know what expense was incurred in making the survey?

MR. BRONSON: I object further by adding that the survey is in no sense necessary to or incidental or connected with the repair of the vessel, but is wholly a requirement of the Marine Underwriters, for the purpose of establishing the relations between the Marine Underwriters and the owners of the vessel, with which the parties to this controversy have no concern.

A. The salvors appointed a surveyor and the Underwriters appointed a surveyor, and I represented our company, and we agreed upon a form of appraisal, in the event that any one of the three disagreed, that such matters would be left to a disinterested party to be mutually agreed upon by the three. Captain Gibbs suggested that we employ Mr. Evans in that capacity, and it was agreed by the other two parties, and he was so employed.

Q. What expense was that to the company?

A. I think his fee was seventy five dollars, of which we paid twenty five dollars—which we agreed to pay, I do not know that Mr. Evans has received his check, but we are obligated to pay twenty five dollars.

Q. I will ask if the company has had any one to oversee the making of the repairs under the specifications?

A. We have had a competent deck man and a competent engineer or machinist continually in attendance, daily in attendance at the wreck and the repairs—

Q. At what wages?

A. A hundred and twenty five dollars a month and expenses.

Q. Do you know when they commenced work?

A. They commenced work on Monday following the letting of the contract. The contract was made on Saturday afternoon late, and my impression is that work was begun on Monday. I will not say that I am absolutely right without refreshing my memory, but it was within a brief period.

Q. About what date, do you remember? The evidence shows February 18th.

A. I think not later than February 20th we put two men to work, our books will show.

Q. How long will it be necessary to keep them so employed?

A. It will be necessary to keep them there for sixty working days, although we are paying them by the month, it is cheaper than if we paid them a per diem, eliminating Sundays, so that their time is going on probably for about sixty eight days from the time the contract was made. We would probably

have to pay ten dollars a day if we had not employed them by the month, apiece.

Q. As I understand you to say you pay them a hundred and twenty five dollars a month each?

A. Yes, and expenses; we room and board them.

Q. What will the expenses amount to for the room and board?

A. We send them home on the night boat and save expense, and we get rid of the cost of feeding them at night and in the morning. At the noon meal they take it at Heffernen's dry dock and I could not say what that expense will be without referring to figures which our bookkeeper can give me.

(Witness excused from the stand).

Hearing adjourned, to be resumed by agreement.

Seattle, Washington, March 23, 1911.

Continuation of proceedings.

PRESENT: Mr. Merritt, for the libelant.

Mr. Bronson, for the claimant.

T. W. C. SPENCER, a witness called on behalf of the libelant being duly sworn, testified as follows:

Q. (Mr. Merritt). Where do you reside, Mr. Spencer?

A. 2700 Third Avenue North.

Q. Seattle?

A. Yes sir.

Q. What is your business?

A. Supervising and consulting engineer.

Q. How long have you been engaged in that business?

A. About a year, going on two years.

Q. What was your business prior to that time?

A. Superintending engineer for the Pacific Coast Steamship company.

Q. How long had you been engaged in that business?

A. Three years.

Q. And before that what was your business?

A. Chief engineer of the City of Puebla.

Q. Were you one of the surveyors who surveyed the Kitsap after she was raised in February of this year?

A. Yes sir.

Q. Did you make a survey of the Kitsap for the repairs and replacements necessary to be made on account of the collision and submersion?

A. Yes sir.

Q. Showing you libelant's exhibit "D," I will ask you if that is a copy of the specifications of the repairs and replacements on the Kitsap on account of the collision and submersion?

A. I have one in my pocket. However, I presume it is a duplicate of this.

MR BRONSON: The Respondent will not dispute the evidence offered by Mr. Gazzam as to the reasonableness of the bids made for the repairs and replacements on the Kitsap.

(Testimony of witness closed).

W. L. GAZZAM, on the stand for further

DIRECT EXAMINATION:

Q. (Mr. Merritt). Mr. Gazzam, what run was the Kitsap on at the time of her collision with the Indianapolis?

A. On the Paulsbo-Liberty Bay run.

Q. That is from Seattle to Paulsbo and Liberty Bay?

A. Including intermediate points.

Q. Paulsbo and Liberty Bay are on an arm of Puget Sound?

A. Yes sir.

Q. How long had the Kitsap County Transportation company maintained a vessel on this run?

A. I could not say as to exact dates, sir, but I am under the impression it is about six years.

Q. State whether or not they had made regular trips on this run during this time?

A. Yes sir.

Q. How often do they make these trips?

A. Two round trips a day every day in the week except Tuesday, Saturday and Sunday in the winter season, and two round trips daily in the summer season. Average two round trips daily.

Q. How many vessels have they had on the run at a time?

A. Well, we always have one on that run.

Q. How long had the Kitsap been on this run?

A. Various times ever since she was built.

Q. How long had she been on it before she was sunk?

A. Since the first day of October.

Q. State whether or not the Kitsap County Transportation company had a contract to carry the mails on this run?

A. We had a sub contract to carry the mails; dealing directly now with the government.

Q. Dealing directly with the government at this time?

A. Yes sir.

Q. Did they have this contract in December 1910?

A. Yes sir.

Q. How long does the contract run?

A. Fours years from last July, the first of July 1910.

Q. State whether or not this contract required you to carry the mails on these trips that you say the Kitsap was making, at the time of the collision?

A. Yes sir.

Q. More than once a day?

A. Yes sir.

Q. Both trips?

A. The Wednesday trip is omitted, the Saturday trip is omitted for mail, the Sunday trip is omitted for mail, that is our winter schedule.

Q. These trips you do not make on these days, the contract does require you to carry it on the one trip you make on these days?

A. Yes sir.

Q. Now after the vessel was sunk, after the Kitsap was sunk, what did the owner do with reference to keeping up this run, performing this mail contract?

A. We substituted a steamer for that, the Hyak.

Q. What is the steamer Hyak?

A. A boat of like character and type of the Kitsap.

Q. Has the Hyak been on the run since that time?

A. Yes, continuously except for a few days at a time when she has taken other runs.

Q. Then what have you done, what boat have you put on the run?

A. We substituted a boat that we borrowed in Tacoma, called the Verona.

Q. But substantially all the time the Hyak has been on the run?

A. Yes sir.

Q. State whether or not it is the intention to the company to continue the Hyak on the run until the Kitsap is ready to place on it?

MR. BRONSON: I do not see how it is competent or relevant to any issue that exists between the libelant and the respondent, and I object to it on that ground.

A. Yes sir.

Q. Do you know the reasonable value of the use of the Hyak here at Seattle, from December 14, 1910, until the latter part of April, when the contract for repairs calls for a redelivery of the Kitsap?

MR. BRONSON: I object to that on the same ground; and further that the two vessels are owned by the same company, and there is no apparent loss in the operation of that one as against the other.

A. We have never chartered the Hyak for less than \$175 a day.

Q. You do know the reasonable value of it?

A. Yes sir.

Q. State what it is?

A. It is \$175 a day.

Q. Does that include the expense of operation of the boat?

A. The expense of the operation of the boat should be deducted from that.

Q. What would that expense of operation be, if you know?

A. If I may be permitted to refresh my memory on that. Seventy-two dollars and forty-two cents per days, actual expense account for the month of January 1911.

Q. And what have you charged in this expense account?

A. We charge all expenses, including overhead tax, in-

surance, proportion of advertising and every character of expense usually charged by a transportation company. Including labor and fuel and galley and all other expenses.

Q. I will ask you whether or not in your opinion the figures that you have given of expense of operation are a fair average of the monthly expenses of operating her?

A. If anything they are a little higher than the average.

Q. You say the Kitsap was a sister ship to the Hyak, substantially the same?

A. Yes sir.

Q. How would her expense of operation compare with her?

A. It would have been a little less than the Hyak, owing to a contract for oil, the oil contract on the Kitsap does not expire until July, so that the expense account of the steamer Hyak would be considerably higher in fuel than it would be for the Kitsap.

Q. How does the Kitsap and Hyak compare as to value of use per day?

A. Relatively the same.

Q. Have you ever chartered the Hyak?

A. At various times.

Q. At what price?

A. Never less than \$175 per day.

Q. That is including expenses?

A. We pay the expense account.

Q. (Mr. Bronson). In other words she earns you about \$100 a day?

A. \$103 or whatever it is, just as I have given it. This is the average for thirty days instead of thirty one.

Q. (Mr. Merrit). Is that true of the Kitsap?

A. Yes sir.

CROSS EXAMINATION:

Q. (Mr. Bronson). Did you charter the Hyak, Mr. Gazam to the Flyer people?

A. At various times.

Q. You remember Mr. Seeley's testimony with reference to two days in December, I think it was?

A. Yes sir.

Q. Was that the Hyak that he chartered?

A. Yes.

Q. And was that before the sinking of the Kitsap or afterwards?

A. That was after the sinking of the Kitsap. I say, December, but I cannot say, Mr. Bronson whether we served the Flyer in December or January without reference to my books; but we have served her since the sinking of the Kitsap.

Q. What I was getting at was that it was the Hyak you chartered to them?

A. At various times since the sinking of the Kitsap, I think on two occasions if not three.

Q. Did you charter to them the Hyak always or did you sometimes charter them the Kitsap?

A. Sometimes the Hyak and sometimes the Kitsap, first one and then the other, it depended on which was most available at that particular time.

A. And in that case, how about this other boat?

A. The Verona, since the Kitsap sunk.

Q. Previous to that time what boat did you use on this run when you had chartered one of your boats?

A. Either the Kitsap or Hyak would be used on our own run.

Q. The Hyak was held as a spare boat in December, was she not?

A. From December 1st to 14th she was held as a spare boat.

Q. Then you put her on the run in place of the Kitsap?

A. Yes, immediately following the sinking of the Kitsap.

Q. It had not been your purpose to overhaul the Hyak during the winter?

MR. MERRITT: I object as incompetent, irrelevant and immaterial.

A. She had been overhauled, sir, just prior to that time.

Q. She was not on any regular run?

MR. MERRITT: I renew my last objection.

A. No sir, she was not.

Q. The summer time, Mr. Gazzam, is the profitable time in the local steamboat business, is it not?

A. Much more profitable than the winter time.

Q. Is it not a fact that most of the local steamboats keep running during the winter, the small Sound steamers, to hold their runs down, and that they do not make very much profit in the winter months?

A. They do not make as much profit as they do in the summer, Mr. Bronson.

Q. As a matter of fact don't they make very small profits and sometimes losses?

A. That depends entirely on the runs. There are some runs where there is heavy freights where the profits are substantial even in the winter season.

Q. Would that be true of the Seattle-Paulsbo route?

A. Our profits are very good on that run even in the winter season, while on some of the other runs they are nominal.

Q. You would not say, Mr. Gazzam, that the laying up or the loss temporarily of the steamer Kitsap, considering the vessels you had on the runs you were operating, would amount to \$100 a day steadily during the months which the Kitsap has been out of business?

MR. MERRITT: I object as immaterial and irrelevant.

A. It would depend entirely, Mr. Bronson, on what would arise during the period of the winter season that you speak of. Judging by the previous winter, we had a very profitable charter for the Hyak for that year.

Q. That was on the Irondale run?

A. That was on the Irondale-Port Townsend run, whereby we received \$175 a day from the Puget Sound Navigation company. Aside from that we had an additional amount of allowance for board, for the men aboard and the \$175 a day. At various times this winter we have been offered charters.

Q. These would be of temporary character?

A. We were offered a charter by the Puget Sound Navigation company, so I was informed by my assistant, of ten days at various times.

Q. That would have been the character of the employment, intermittently, as far as you know now?

A. Possibly so.

(Testimony of witness closed).

Hearing adjourned.

Seattle, Washington, April 24, 1911.

Continuation of proceedings.

PRESENT: Mr. Merritt, for the libelant.

Mr. Bronson, for the claimant.

MR. MERRITT: It is stipulated that the ship's stores on board the Kitsap at the time she sank in collision with the Indianapolis, amounted to \$100, that is stores not covered by insurance.

MR. BRONSON: That is satisfactory.

MR. MERRITT: Libelant rests.

CLAIMANT'S TESTIMONY.

CAPT. HOWARD PENFIELD, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). What is your business, occupation or profession, and how long have you been engaged in it?

A. Master marine. I have been following the water for thirty years. I have been master some twenty one years.

Q. And you have been a master of steam vessels on Puget Sound for about how long?

A. Off and on for about eight years.

Q. How long have you been master of the Indianapolis?

A. Four years, practically four years.

Q. You were master of the Indianapolis on the 14th day of December 1910, when she was in collision with the Kitsap?

A. Yes sir.

Q. Now captain, go on and state fully, in your own way, what occurred on that trip from Tacoma on which this accident took place?

A. Well, we left Tacoma at the usual time, three o'clock. It was foggy out as far as Brown's point. It cleared up and I turned the ship over to the mate and laid down as usual in the afternoon on the three o'clock trip from Tacoma. The

mate called me just after rounding Alki point, before we got to Duwamish head. He says I guess it is thick in the bay. I turned out, slipped my shoes on. I never take my pants off; I take off my collar and shoes and lie down. I went in the pilot house, and he slowed down just as I was going into the pilot house.

Q. Where was this?

A. At Duwamish head.

Q. Right at Duwamish head?

A. I could not see the buoy, I could see the headland.

Q. That is at West Seattle?

A. Yes. I asked him how long he had run and he said he run the usual time, eight minutes, and it was my custom to slow down just before rounding the buoy, he runs three minutes and a half, and I looked at the clock and it was 33. The fog was not very thick, it was in waves practically all the way across the bay until we got pretty well over toward the east shore.

Q. What do you mean by saying it was in waves, could you see through it once in a while?

A. Yes, I could see fully five hundred yards ahead then it would shut in for a little spurt and then light up again, but as we got over to the east short she shut in pretty thick, there was smoke mixed in with it I guess and made it pretty dense.

Q. Well, what was the course?

A. I run five minutes on my regular course.

Q. What course is that?

A. I had a sour second echo at Duwamish head. North east by east quarter east.

Q. That is your course across the bay?

A. Yes sir.

Q. That is the regular course you steer every day?

A. When I do not haul off for a tow or something like that.

Q. That is your course unless you have to make way for some vessel?

A. Yes. That is not the course when clear, I steer a different course then, I steer a half in clear weather.

Q. What difference does that make in your approach to the dock?

A. That makes the Grand Trunk on the quarter, and in clear weather I come in with a little more headway and she pulls around to port when she backs and I come in nearly head on. But in a fog I come in easy to land up to the face of the dock to land at the Colman dock.

Q. Now you held on the course from Duwamish head how many minutes?

A. I ran five minutes.

Q. What speed?

A. Full speed.

Q. What did you do then?

A. Put her under half speed.

Q. How far would she travel in five minutes at full speed?

A. A mile and a quarter.

Q. One mile and a quarter?

A. Yes sir.

Q. What is the distance across from Duwamish head to the dock on your course?

A. Two nautical miles.

Q. Then what did you do with her speed?

A. Well, I put her under half speed, slowed down and stopped her.

Q. You put her under half speed, slowed down and stopped her as separate steps?

A. Separate intervals.

Q. Within what time, we will say?

A. About a minute.

Q. About one minute?

A. Well, in fact it was exactly a minute. When I put her under half speed it was 38, and 39 when I stopped her.

Q. In going across the bay in a fog like that do you usually keep track of the time accurately?

A. Yes sir.

Q. Is it necessary to make the proper course?

A. Yes sir.

Q. How long did she proceed under a stop bell?

A. One minute.

Q. Then what was the next change you made in her speed?

A. Slow astern.

Q. What was the first intimation you had that any vessel was in front of you?

A. Well, I got an echo off the Kitsap, proved to be the Kitsap, I did not know it was her at the time.

Q. Where was this, what was the direction of this echo?

A. It was about a point on the starboard bow.

Q. Was that the first that you had heard of the whistle of any vessel which turned out to be the Kitsap?

A. No sir.

Q. What was the first whistle you heard?

A. The same whistle.

Q. Where was that?

A. On the port bow.

Q. About how long previous?

A. Well, when I put her under slow bell, half speed.

Q. How far away did this whistle on the port bow appear to be, close at hand or at a distance?

A. Quite a distance away.

Q. Was it such a whistle as indicated to your mind the presence of danger at that time?

A. No sir.

Q. What did you think would be the course of the vessel steering the course she seemed to be steering from the whistle, etc.?

A. Well, she seemed to be moving to the southward across our bow.

Q. Did that indicate to your mind that she was safely across your bow going south?

A. I thought it would, yes.

Q. Then as I understand you, you heard her whistle next on which bow?

A. On the port bow.

Q. Did you hear her twice on the port bow?

A. Yes sir.

Q. Was she advancing across your bow then by the sound of the whistle?

A. Yes sir.

Q. When did you next hear it?

A. Starboard bow.

Q. And about what position on your starboard bow?

A. About a point. It was right in line with the trumpet on the dock and myself, the Indianapolis, the two of them were about in line.

Q. There was a trumpet on the dock, was there?

A. Yes sir.

Q. And you heard it?

A. Yes sir.

Q. How were you, as determined by the position of the trumpet on the dock and your point of departure at Duwamish head, how were you relative to your ordinary course?

A. I was a fraction to the northward of it?

Q. How much?

A. Well, I was heading just right the usual course, just for the Grand Trunk dock.

Q. You were headed for the Grand Trunk dock?

A. Yes sir.

Q. That would be slightly north of your faith weather course?

A. Yes sir.

Q. How would it compare with the course which you steered in a fog as it was that day, would it be on that course?

A. It would be on that course.

Q. What is the distance between the Grand Trunk dock and the Colman dock?

A. I never measured it but I should judge about 80 feet.

Q. That would be the only discrepancy in the two courses, would be the distance apart of these two docks?

A. Yes sir. I guess it is a little more than eighty feet. I guess probably about 90 or 100 feet.

Q. Now after you heard the first whistle on the Kitsap on your starboard bow, what was the next you knew of the Kitsap?

A. Well, I heard a couple after I heard the first one.

Q. You heard two more?

A. Yes sir.

Q. And what position did they maintain relative to your starboard bow?

A. He was shutting in on me all the time. He was closing in on me, his whistle did not veer.

Q. Did not veer across the bow?

A. No sir.

Q. Simply came closer?

A. Yes sir.

Q. What did you do relative to the speed of the Indianapolis?

A. I started back before I saw him, when I got the second echo I started slow astern.

Q. You had been running then one minute dead slow?

A. No, the engines dead.

Q. For one minute previous to that of half speed, slow and dead slow?

A. Yes sir.

Q. You got yourself a three minute echo and then you put her half speed astern?

A. Slow and astern.

Q. Slow astern, then half speed astern.

A. Yes sir. Then I have him three whistles. Gave slow astern before I could see him. I knew he was getting close by his whistle and echo I got off him. I knew he was shutting in on me.

Q. So as to make it clear, captain, for the Court, when you speak of his closing in on you, to be real explicit, explain whether or not you mean that the Kitsap was steering a course which would lead them across your bow or steering a course which would bring them toward you if you were standing still.

A. That is what I mean, that echo I got from him, the way the whistle sounded to me there, she was closing in on me, that she was approaching me, that we were getting pretty close together. For he had crossed my bow I knew instead of going off any further, I knew he was coming in, rounding to a westerly course there somewheres because I did not vary my course a sixteenth of a degree, while he changed all the time, until I started to back, and then she swung around a little.

Q. What speed would the Indianapolis have under the

bells which you have testified to at the end of the second minute, running dead, as near as you can determine?

A. The second minute?

Q. The end of the second minute?

A. She would have mighty little headway running two minutes with a dead engine I could stop her within ten feet.

Q. Did she have any considerable headway on her at the time when the Kitsap hove in sight?

A. She did not have much. It is my custom in cloudy (foggy) weather after she runs a dead minute—that is the reason I am so particular to look at the time, and was sure of the time when I stopped her, I looked at the clock, then I ran dead a minute and I was just on the point of going dead slow ahead to feel my way closer, and I got that echo off her and another whistle from the Kitsap, and instead of doing that I went slow astern she was getting too close.

Q. In other words you would ordinarily, after that time, have run her slow ahead?

A. Dead slow.

Q. To pick up and feel your way into the dock?

A. Yes, that is the way I work things generally.

Q. Now what was the first you saw of the Kitsap?

A. The masthead and range light.

Q. Where did she loom out of the fog, relative to the point from which her whistle had sounded?

A. The same point.

Q. What speed did she appear to be making?

A. She appeared to me to be coming a pretty good gait, had a wash on her bow, I noticed that.

Q. You mean she was throwing foam?

A. She had a break on the bow.

Q. Breaking water from the bow?

A. Yes sir.

Q. What signals did she sound at that time?

A. I did not think she sounded any; I did not notice any.

Q. What was the actual condition of the collision, did you run into the Kitsap or did the Kitsap run into you, or run against you, what was the actual condition of the collision?

A. Well, it looks to me as if she ran against me; it appeared that way to me.

Q. And how did she strike, what parts of each vessel?

A. She struck on the port bow.

Q. Of the Kitsap?

A. Of the Kitsap.

Q. Impaling herself on the stem of the Indianapolis?

A. Yes sir.

Q. I will ask you to examine the three sketches here. The first one has been marked for identification Claimant's exhibit

1. State if you drew this?

A. Yes sir.

Q. What do they indicate according to the names you have there?

A. They indicate the Kitsap at certain stages, at the time we struck and as she went down.

Q. The lower one indicates approximately the angle at which they came together, does it?

A. Yes, and the place they struck.

Q. That is the one that I have marked with K that indicates the Kitsap?

A. Yes sir.

Q. And the Indianapolis the one I have marked "Ind?"

A. Yes.

MR. BRONSON: Have you any objection to this?

MR. MERRITT: No.

Paper marked Claimant's exhibit "1," filed and returned herewith.

Q. In this first picture marked "colliding," it shows the bow of the Kitsap projecting off to the port bow of the Indianapolis?

A. Yes sir.

Q. And slightly behind the forward deck house there?

A. Yes sir.

Q. I show you this sketch that has been marked 2 for identification. Is that also a sketch by yourself?

A. Yes sir.

Q. What does that purport to show?

A. That is the position of the two ships when I first saw

the range light and masthead light on the Kitsap, the angle and degree she was on, about 75 or 80 feet off.

Q. It is drawn to represent as far as possible the actual scale of approach, the angles of approach?

A. Yes sir.

MR. BRONSON: I offer this in evidence.

MR. MERRITT: We have no objection.

Paper marked Claimant's exhibit "2," filed and returned herewith?

Q. I had you a drawing that has been marked 3 for identification, and ask you if that is also a drawing prepared by yourself?

A. Yes sir.

Q. And what degree of approach or what angle rather of approach is represented there in the two figures?

A. 45°.

Q. The Indianapolis up near the circle here and the Kitsap down in the corner of the page?

A. Yes sir.

Q. That represents an angle of 45° or how many points?

A. Four points.

Q. Then if the two vessels were approaching each other, four points off each other's bows, they would present approximately the position of the two vessels here marked Kitsap and Indianapolis.

A. Yes sir.

MR. BRONSON: I offer this in evidence.

MR. MERRITT: I have no objection.

Paper marked Claimant's exhibit "3", filed and returned herewith.

Q. I show you this chart which has been marked 4 for identification. This is a government chart of Elliott's Bay and the water front of Seattle. Have you marked the course of the Indianapolis as steered in the fog on the chart?

A. Yes sir.

Q. North east by east quarter east?

A. Yes sir.

Q. Magnetic?

A. Yes sir.

Q. But you have marked on there course two miles east?

A. Yes, two miles from the dock.

Q. That represents the course you ordinarily steer?

A. Yes sir.

Q. And the course you steered on the day in question?

A. Yes sir.

Q. Are the two docks shown, the Grand Trunk dock and the Colman dock, shown in lead pencil, in their present condition?

A. Yes, they were extended after this survey was made.

Q. They have been extended?

A. Yes. They were carried out 800 feet.

Q. Have you also traced on the chart any kind of a small figure of a vessel intended to represent the Indianapolis?

A. Yes sir.

Q. Where I mark "Ind." And likewise the small vessel to represent the Kitsap?

A. Yes sir.

Q. I will mark that K?

A. Yes sir.

Q. And the course apparently steered out from pier number 4, backing out and then swinging on a curve outward, eventually heading somewhat toward the Indianapolis?

A. Yes sir.

Q. I see you have an X marked on this course and that is $1\frac{1}{4}$ miles. What does that represent?

A. That is where I put on the half speed.

Q. And what did you mean to indicate by a line across the course, a straight line?

A. Where I stopped the vessel.

Q. That is the Indianapolis?

A. Yes sir.

Q. Now Captain Penfield, do you know from the whistles you heard and the position in which the Kitsap appeared to you out of the fog, whether or not she had been south of the Grand Trunk dock on the day in question on this course she was steering?

A. I think she had.

MR. MERRITT: I move to strike the answer as a conclusion.

Q. Was she proceeding from a point southerly of the Grand Trunk dock and going northerly at the time when the collision occurred, northerly and westerly?

A. Yes sir.

Q. She had then attempted to describe a half circle in front of the course of the Indianapolis, after backing away from pier 4?

A. Yes sir.

Q. And crossed your bows twice.

A. Yes sir.

Q. At the actual time of the collision was the Indianapolis under any substantial headway?

A. No sir.

MR. BRONSON: We offer this chart in evidence, with the diagrams drawn by the witness upon it.

Chart marked Claimant's exhibit 4, filed and returned herewith.

Q. Referring captain, to Claimant's exhibit 3, and supposing that the master of the Kitsap had testified that it was true that the Kitsap had the Indianapolis four points off her port bow, and steering a course alleged to have been steered—you heard the evidence?

A. Yes.

Q. Could a collision have resulted between the Indianapolis and the Kitsap?

A. No sir.

Q. From your knowledge of navigation, could the Kitsap have backed away from pier 4 sufficient to get clear of the dock and have gone ahead on a port helm and turned a circle and gotten on her course, without going south of the Grand Trunk dock, or heading out into the bay further than her master testified she did?

MR. MERRITT: I object. He has not shown the witness is competent to testify what the Kitsap could do.

Q. Could any vessel of the size of the Kitsap, could she turn the course which she is claimed to have turned?

A. Well, they don't generally do it.

MR. MERRITT: I move to strike the answer as not responsive to the question and as incompetent, irrelevant and immaterial.

A. I have reason for saying that, too, sir.

Q. Explain your reason?

MR. MERRITT: I object, for the reason that the witness has not shown himself competent to testify what the Kitsap could do in making this turn.

A. Well, when small boats are leaving pier 4 and down there, and I am backing out at the same time, they have to stop and back to get out of my way sometimes, they blow a passing whistle and I stop and let them go astern of me. I do not go north of the Grand Trunk dock in backing out of my berth at the Colman dock, and that shows that they come around and swing in south of the Grand Trunk dock.

MR. MERRITT: I move to strike the answer as irrelevant and immaterial.

CROSS EXAMINATION:

Q. (Mr. Merritt). You say, captain, that you laid down after leaving Brown's Point?

A. Yes sir.

Q. The Indianapolis was running full speed all the way until she reached Alki?

A. Yes sir.

Q. You were called by the mate just before you reached Duwamish head?

A. Yes sir.

Q. You could not see the bell buoy there?

A. No sir.

Q. The Indianapolis was under slow bell at the bell buoy?

A. She was put on slow bell.

Q. You had not heard the order given?

A. I heard the telegraph.

Q. You heard the telegraph putting her under slow bell?

A. Yes sir.

Q. Before you went out.

A. Yes sir.

Q. How long did she continue under this slow bell?

A. A fraction of a minute.

Q. Then you gave the order for full speed?

A. Yes sir.

Q. The order was given at the bell for slow speed because it was thick?

A. No sir, not necessarily.

Q. You do not ordinarily give a slow bell at the buoy if it is clear?

A. I have rounded the buoy full speed.

Q. You say you have rounded the buoy at full speed. You do not ordinarily give a slow bell at the buoy unless it is thick?

A. No sir.

Q. That is the reason the slow bell was given this time was because it was thick at the buoy?

A. Yes sir.

Q. You did not see the buoy?

A. No sir.

Q. Could not see it?

A. No sir.

Q. You could not see the head?

A. I could see the head.

Q. How long before you saw the head had before you took command?

A. I saw the head the minute I stepped in the pilot house.

Q. You were just opposite the head?

A. Yes sir.

Q. And you took the course that the vessel was being steered, and then you steered this course of north east by east quarter east, from there?

A. I took charge and brought her around.

Q. You brought her around yourself on to this course?

A. Yes sir.

Q. Where did you come around on to that course?

A. At the buoy.

Q. Just at the bell buoy?

A. Yes sir.

Q. So that it was a little before you reached the bell buoy that you had taken charge of the wheel house?

A. Just about the bell buoy; I had the bell buoy just a little abaft the beam.

Q. It was a little thick between you and the bell buoy?

A. Yes sir.

Q. You say you looked at the clock at that time and it was 33?

A. Yes sir?

Q. 4:33?

A. Yes sir.

Q. You are positive about that?

A. Yes sir.

Q. You keep your clock regulated every day?

A. Yes sir.

Q. With what time?

A. The time in Tacoma, the clock in Tacoma.

Q. The Western Union Time?

A. I do not know what time the clock in the tower has, but I set my time in the morning with that, and correct it here with Western Union time in Seattle. We leave Tacoma in the morning by tower time, and then when I get to Seattle I correct it to Western Union time.

Q. So that your clock in the pilot house is running Western Union time all the time?

A. Yes sir.

Q. You are positive it was :33 when you got there?

A. Yes sir.

Q. You say you run from there full speed ahead for 5 minutes.

A. Yes sir.

Q. And it was foggy during that time?

A. It was in waves, patches.

Q. Patchy, and part of the time quite thick?

A. I could see 500 yards.

Q. Part of the time you could not see 500 yards?

A. No.

Q. It was quite thick?

A. The fog was drifting at that time.

Q. The fog was waiving all the time?

A. I could see further than other times.

Q. Some of the time you could not see very far?

A. Some of the time it was not what I would call real thick weather.

Q. Now what is the speed of the Indianapolis where she is running full speed?

A. Fifteen.

Q. You ran this five minutes on this course and then you slowed down at :38?

A. Slowed down to half speed.

Q. You looked at the clock at that time did you?

A. Yes sir.

Q. So that you could swear that is correct?

A. Yes sir.

Q. What speed does the Indianapolis run when she is running half speed?

A. Half speed?

Q. Yes.

A. Covers a mile in five minutes.

Q. Your half speed then does not mean one half of full speed?

A. No sir.

Q. It means that the engines are making half of the revolutions that they make?

A. 130 revolutions.

Q. How many turns does it make when running full speed?

A. 154.

Q. Then when you say you are running half speed you are making 12 miles instead of 15 miles?

A. Yes.

Q. And you ran that way for how long?

A. A fraction of a minute.

Q. When did you first hear the fog whistle from the Kitsap?

A. After I slowed down.

Q. And you did not hear her before you slowed down?

A. No. I might have heard—I heard a couple of whistles before I slowed down. I could not say it was the Kitsap.

Q. Had you heard different whistles than the Kitsap's whistle before you slowed down?

A. I heard the Telegraph's whistle.

Q. You had heard the Telegraph's whistle?

A. Yes sir.

Q. There is a difference between the Telegraph's and the Kitsap's whistle?

A. There is.

Q. So that you knew their whistles?

A. Yes sir.

Q. You knew that the first whistle you heard was the Telegraph's and not the Kitsap's?

A. Yes, I knew it was not the Kitsap.

Q. You heard the Telegraph on your port bow?

A. Yes sir.

Q. As she came in from West Point?

A. Yes sir.

Q. How long did you hear her?

A. She was pretty well ahead of me.

Q. When did you first hear the Kitsap's whistle?

A. When I put her under half speed.

Q. That was your occasion for putting her under half speed?

A. No sir.

Q. The fog got so thick you put her under half speed?

A. Yes sir.

Q. Just at that time you heard the Kitsap?

A. Yes sir.

Q. And that was at :38.

A. Yes.

Q. Where did you hear the Kitsap's whistle?

A. Port bow.

Q. At what angle?

A. About a point.

Q. One point.

A. Yes.

Q. You can tell in foggy weather whether a whistle is one point more or less, can you?

A. Yes sir.

Q. When you say one point you mean one eighth of a quarter of the compass from dead ahead, don't you?

A. Yes sir.

Q. Where did you hear the next whistle from the Kitsap?

A. Port bow.

Q. And what angle was that?

A. That was probably a little on the port bow, half a point or so, about like that.

Q. When did you hear the next whistle—whereabouts?

A. That was on the starboard bow.

Q. And whereabouts?

A. About the same distance, about half a point.

Q. Then where did you hear next the whistle of the Kitsap?

A. About a point.

Q. Then where was the next one?

A. Just about the same; I heard three or four about the same position.

Q. Then where did you hear the next one?

A. About the same position.

Q. The same?

A. Yes sir.

Q. How many did you hear in that same position?

A. About three or four, I could not say exactly, about three or four.

Q. All about on your starboard bow.

A. Yes sir.

Q. Is that all you heard before the collision?

A. That is all.

Q. And the next thing was you saw her range lights?

A. Yes sir.

Q. So that all the whistles you heard of the Kitsap were not more than one point either on your port or your starboard bow?

A. No sir.

Q. In the meantime you ran about a minute under this slow speed?

A. No sir.

Q. How long?

A. I did not run only a fraction of a minute.

Q. Then what did you do?

A. I put her under half speed may be 15 seconds and then this all took place in the space of a minute, I put her under slow bell.

Q. How long did you run under a slow bell?

A. I stopped her, and then when I stopped her that was :39.

Q. How long did you run under a slow bell?

A. A few seconds.

Q. What speed does she run when she is under a slow bell?

A. She makes 90 turns.

Q. Do you know what speed that gives her?

A. I never timed that.

Q. Then you stopped her?

A. We stopped.

Q. You are positive it was :39 when you stopped?

A. Yes, I looked at the clock.

Q. And then this last minute you had been running under a half speed, a slow bell and then you stopped?

A. Yes sir.

Q. About what headway would she have at :39 when you stopped her?

A. Probably going four or five miles an hour.

Q. About four or five miles an hour.

A. Yes.

Q. Now then what was the next order that you gave?

A. Slow astern.

Q. That was after you saw the Kitsap?

A. Yes—no, before I saw her.

Q. That was before you saw her?

A. Yes.

Q. How long was that after you had stopped her?

A. About a minute.

Q. Her engines had been dead for a minute?

A. Yes sir.

Q. Then you stopped?

A. Yes. They had been dead a minute from the time I stopped.

Q. I say a minute from the time you stopped before you gave the slow bell astern?

A. Yes sir.

Q. What speed would she make while her engines were dead when she had been making these various speeds that you have given?

A. She stops very quick.

Q. She ought to stop very quick after half speed astern?

A. Yes sir.

Q. About how soon?

A. Oh, she could stop, after she has run a minute, I can stop her within 65 or 70 feet.

Q. After the engines have been dead a minute you can stop her within 65 or 70 feet following half speed astern?

A. Either slow or half speed astern.

Q. If she had been running under a slow bell before you could stop her—

A. Yes, dead slow.

Q. And if she had been running under half speed or this slow bell, you could have stopped her quicker? than 60 to 75 feet?

A. It don't make much difference. I can run her full speed and then stop her engines, then let her run a minute and stop her almost as quick as if she was slowed down to half speed. As soon as you shut her off she dies down fast.

Q. So that a :39 she was under such control you might stop her in 65 or 70 feet?

A. Yes sir.

Q. And a half bell followed by slow speed astern, it would stop her in that time?

A. Yes sir.

Q. Now when was the collision?

A. It was about :40. It was around :40. I would not say. For I did not look at the clock after :39.

Q. You did not look at the clock? About how long was it after :39?

A. Oh, probably half a minute, something like that.

Q. About :39½ that the collision occurred?

A. Yes sir.

Q. Now during this time while you heard these whistles from the Kitsap did you change your course?

A. No sir.

Q. Kept right on the same course?

A. Yes sir.

Q. How far would the Indianapolis travel under the speeds that you have given, with her engines stopped, in that minute?

A. Probably travel seven or eight hundred feet.

Q. Then I understand you to say that you ran slow about a minute after you left Duwamish Head?

A. After leaving Duwamish Head?

Q. Yes.

A. No.

Q. How long was it after you left there before you gave full speed ahead?

A. She was under slow bell about half a minute.

Q. That was a half a minute after you came—

A. The first officer rang the telegraph, I heard him ring the telegraph and I should judge it was about half a minute that it took me to get into the pilot house and I asked him where he was at the time we rounded Alki—

Q. Had you slowed down any during these five minutes?

A. No sir.

Q. Sure about that?

A. I am sure.

Q. Did not you testify before the Inspectors of Hulls and Boilers, in the investigation of this collision last December?

A. I testified, yes.

Q. Did not you then testify that you had run five

minutes after rounding the buoy at :33, and in that time you had slowed down once, I thought I had a whistle ahead, it was not, it was a gasoline boat, when I got the whistle right ahead I stopped?

A. No sir.

Q. You did not testify to that?

A. No sir.

Q. You are sure of that?

A. I am sure of that.

Q. Now at the time you slowed down, you thought that you had got to the point where you usually stop your engines to drift into the dock, didn't you?

A. No sir, I was not far enough in.

Q. You were not far enough in?

A. No sir.

Q. Your usual time is 7 minutes full speed ahead from the buoy, before you slow down to come in to the dock?

A. Yes sir.

Q. Your usual time is 10 minutes from the bell buoy until you are tied up at the dock?

A. Yes sir.

Q. You run 7 minutes full speed ahead?

A. Yes sir.

Q. Then slow down and drift in?

A. Yes sir.

Q. Now, you testified, didn't you, before the Inspectors that you first—as follows:

"I first heard the whistle on the port bow, then I got it on the starboard bow, then I got an echo from the Kitsap and sang out full speed astern, gave 3 whistles, her mast-head and range lights came in sight right on the starboard bow." You so testified, did you not?

A. I think they got that testimony all tangled up, who ever took it down.

Q. Did you testify?

A. I testified then the same as now.

Q. Did you or not so testify?

A. I did not.

Q. Now when the Kitsap came in sight how was she headed with reference to the Indianapolis?

A. She was about a point on the starboard bow.

Q. About a point on the starboard bow?

A. Yes sir.

Q. How was she headed?

A. About 11° .

Q. Off your starboard bow?

A. Yes sir.

Q. When they came together it was at an angle of about 45° ?

A. No sir.

Q. What was it?

A. It was about a point or a point and a half, I should judge.

Q. About a point or a point and a half?

A. Came together about the same as they showed up first.

Q. The diagram that you have made here from your memory of how the vessels came together, shows an angle of about 45° , does it not?

A. No sir.

Q. You also testified, did you not, before the Inspectors, as follows: "I was feeling my way in, I got an echo from the Kitsap and her fog whistles were pretty close; when I saw her range light and masthead light I said half speed and gave three whistles, then I gave the order full speed astern"?

A. No sir.

Q. You did not testify to that?

A. No sir.

Q. You have read the testimony as has been transcribed by the reporter before the Inspectors, haven't you?

A. I just read it over.

Q. You said a while ago they had got it all mixed up. When you said they had got it all mixed up you referred to the notes of the reporter?

A. All you have to do is to refer to what the engineer said.

Q. When you said they got it all mixed up—

A. There must have been some mistake because I gave the orders for slow astern first.

Q. You stated a few minutes ago that they got it all mixed up, the testimony before the Inspectors?

A. I did not say all of it.

Q. Well, part of it?

A. About the slow astern, yes.

Q. And when you said that they had got it all mixed up you refer to the reporter's transcript of your evidence?

A. Yes sir.

Q. You have read that transcript haven't you?

A. I glanced over it.

Q. And what I have read here is your testimony as reported by the reporter before the Inspectors?

A. I did not read all that report.

Q. The next question that was asked you was "You had seen his lights at this time"? and your answer was "Yes". Is that correct?

A. Yes, that is what I testified before the Inspectors.

Q. That is the testimony that you gave them up there. You had seen his lights at this time, at the time you gave the order half speed and then full speed astern, then you had seen his lights?

A. I saw his lights before I gave the order half speed astern.

Q. That is a fact?

A. Yes, half speed, but I was backing slow speed before that, I got her under slow bell.

Q. You gave a slow bell?

A. Then, yes.

Q. Then gave half speed?

A. Yes.

Q. Then gave full speed?

A. Yes sir.

Q. And how much speed was she making at the time of the collision?

A. She was not making much.

Q. Now when the Kitsap came in sight how was she headed with reference to the Indianapolis?

A. She was about a point on the starboard bow.

Q. About a point on the starboard bow?

A. Yes sir.

Q. How was she headed?

A. About 11° .

Q. Off your starboard bow?

A. Yes sir.

Q. When they came together it was at an angle of about 45° ?

A. No sir.

Q. What was it?

A. It was about a point or a point and a half, I should judge.

Q. About a point or a point and a half?

A. Came together about the same as they showed up first.

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A. No sir.

Q. You did not testify to that?

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A. I just read it over.

Q. You said a while ago they had got it all mixed up. When you said they had got it all mixed up you referred to the notes of the reporter?

A. All you have to do is to refer to what the engineer said.

Q. When you said they got it all mixed up—

A. There must have been some mistake because I gave the orders for slow astern first.

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Q. You have read that transcript haven't you?

A. I glanced over it.

Q. And what I have read here is your testimony as reported by the reporter before the Inspectors?

A. I did not read all that report.

Q. The next question that was asked you was "You had seen his lights at this time"? and your answer was "Yes". Is that correct?

A. Yes, that is what I testified before the Inspectors.

Q. That is the testimony that you gave them up there. You had seen his lights at this time, at the time you gave the order half speed and then full speed astern, then you had seen his lights?

A. I saw his lights before I gave the order half speed astern.

Q. That is a fact?

A. Yes, half speed, but I was backing slow speed before that, I got her under slow bell.

Q. You gave a slow bell?

A. Then, yes.

Q. Then gave half speed?

A. Yes.

Q. Then gave full speed?

A. Yes sir.

Q. And how much speed was she making at the time of the collision?

A. She was not making much.

Q. How long before the collision had you given this slow speed?

A. Well, it was a fraction of a minute, a few seconds.

Q. Half a minute?

A. No, it could not have been half a minute.

Q. Was it twenty seconds?

A. I would not say. It was a fraction of a minute. It was a few seconds, I would not say whether it was 10 or 15. I did not have time to look at a stopwatch to get the seconds down. It was a few seconds.

Q. You also testified, did you not before the Inspectors, as follows: "Q. Do you know just what time this collision took place?"

"A. Just about :39 or :39½, it might have been :40. I did not look at the clock. My attention was taken up with something else." You testified to that?

A. Yes sir.

Q. And you also testified as follows, didn't you:

"Q. Do you know what time it was when you stopped?

"A. Yes, it was :38 when I slowed down.

"Q. What time did you stop the engine?

"A. About a half a minute afterwards. It was not a minute. I sagged along fully a minute with the engines dead."

A. Yes sir.

Q. The fact is you thought the whistle you heard was from the Reliance?

A. I surmised it was. I thought it was her, but I would not swear to it. I would not swear to any whistle unless I knew it. I could not tell the Reliance's whistle from any other whistle. Some I can know and some I cannot.

Q. Now after the collision, you backed away?

A. I did.

Q. You went away and then came ahead again?

A. Yes sir.

Q. And put the bow of the Indianapolis practically into the cut of the Kitsap?

A. Yes sir.

Q. Kept the Indianapolis going ahead a little bit?

A. Dead slow.

Q. Under a port helm all the time until you got away from her?

A. Yes sir.

Q. You had her helm clear over to port?

A. Yes sir, hard aport.

Q. About how long did that last?

A. Oh, about 20 minutes,—I guess. I will take that back. It was not 20 minutes, it was about 10 minutes.

Q. When the collision occurred, the Kitsap's bow swung around to starboard, did it not?

A. After the collision?

Q. At the time of the collision.

A. At the time it swung around a little.

Q. Now you may have been a little north of the Grand Trunk dock, may you not?

A. I do not believe I was. I could pretty near swear to it.

Q. But you would not quite swear to it.

A. No.

Q. You may have been a little further north than you thought you were?

A. In steering that course with a four second echo on Duwamish head—

Q. Yes, but you are going by the echo partly from Duwamish Head and the course you steered across?

A. No, I was going by the course I steered and my departure and my whistle on the dock.

Q. You did not handle the wheel yourself?

A. Yes sir.

Q. You handled the wheel personally?

A. Yes sir. I do after we get busy making a landing.

Q. I know, but after you left Duwamish while on your course across the bay, you did not handle it?

A. No sir.

Q. You had a quartermaster?

A. Yes sir.

Q. You were in the pilothouse?

A. Yes sir.

Q. Have a seat?

A. No sir. There is a seat in the pilot house.

Q. You sit on that, I suppose, or stand back there in the pilot house?

A. I sit down occasionally to rest my legs when it is clear.

Q. And you left the quartermaster to steer this course?

A. Not when it is thick.

Q. Did you this time?

A. No sir.

Q. You watched it all the time, did you?

A. Yes sir.

Q. And you did because of the fog?

A. I did not have my eye on the compass all the time, but I glanced in occasionally to see if he was steering all right.

Q. Except as you glanced in occasionally, you left it to the quartermaster to steer this course?

A. Yes sir.

Q. And that is what you are basing your opinion as to where you were with reference to the Grand Trunk dock is the echo that you received at Duwamish Head and the course that the quartermaster was supposed to steer from that point?

A. No sir.

Q. What is it?

A. The course the quartermaster did steer.

Q. The course the quartermaster steered, so far as you observed?

A. I knew he steered because I was watching, I glanced at the compass.

Q. I say that is all you know about it, you glanced at the compass, as you say, occasionally?

A. Yes sir.

Q. That is all you know about it, how he was steering the course?

A. Yes.

Q. Now you have testified, captain, that all of these small boats, when they come out there, when you happen to be backing, they have to back to get out of your way?

A. Not all of them. I say occasionally it happens to them.

Q. You never paid attention to what kind of a turn the Kitsap would make?

A. Not particular, no sir.

Q. You have not paid attention to the kind of a turn she would make when she was backing away from pier 4, in front of pier 5?

A. No sir.

Q. You could not say, as a matter of fact to your own knowledge, whether after making a turn as described in the testimony of Captain Hanson, she would go south of the Grand Trunk dock?

A. Only what transpired with me on other boats.

Q. As far as the Kitsap was concerned you could not say that would be correct or not?

A. I never came in contact with her—only once.

Q. Just this once. It is your opinion that the Kitsap ran into the Indianapolis?

A. That is my opinion, yes sir.

Q. And how far could you see ahead at the time you saw the headlights?

A. It is my opinion if the captain of the Kitsap had his ship well under control, as the Indianapolis was, if we had come together, there would not have been any damage. Might have knocked off a little molding or damaged the house a little, but there would have been no great amount of damage done. That is my opinion on the side.

Q. It is your opinion that the Kitsap running across your bow caused the Indianapolis to cut into her eight or ten feet, as shown in the photographs that have been introduced in evidence, for the Indianapolis was practically at a standstill?

MR. BRONSON: I object to that, it assumes a state of facts which I think the evidence does not support. I do not think the evidence shows she went in eight or ten feet.

A. Yes sir.

Q. How far could you see in the fog at the time you saw the masthead and range rights?

A. Probably thirty or thirty-five feet. You could see the light further than you could the hull.

Q. And you think she was coming pretty fast?

A. Yes sir.

Q. So that if you could not be over thirty or saw her lights first it was not very long?

A. I could see further than that when I saw the lights.

Q. You could see her lights further?

A. Yes sir.

Q. You could see them—

A. 60 or 75 feet I saw her lights.

Q. How long was it after you saw her lights that the collision occurred?

A. Not long.

Q. About how long?

A. Five or six seconds, something like that.

Q. Of course you were pretty busy then with your own ship, the minute you saw her lights?

A. I was not too busy to take notice of things that were going on.

Q. You could see her lights before you could see her hull?

A. Yes sir.

Q. You never paid attention to her hull did you?

A. I did, when I could see it, I looked at the hull.

Q. How far away could you see her hull?

A. 35 to 40 feet.

Q. And the collision must have occurred about a second after that?

A. Well, it was—a second is of pretty short duration.

Q. A couple of seconds. It would not take very long.

A. A second is only while you count one, two, three. It must have been five or six seconds.

Q. After you could see the hull 35 or 40 feet away—how far is the pilot house from your bow?

A. Hardly thirty feet from the bow.

Q. Did you see the water?

A. Yes sir.

Q. Very clear?

A. I could see it right down to the bow, see the wash on it.

Q. You stopped to look at these things?

A. I took notice of them, yes. I was doing all I could do then, backing full speed.

Q. You further testified, didn't you, captain, before the Inspectors, as follows:

"Q. About what angle did the boats come together?

"A. Just about like that when we came together. (Indicating.) Just abaft this gangway, just abreast of the pilot house.

"Q. Just about the angle of four points as you have it there?

"A. Yes sir."

A. No sir.

Q. That is not your testimony before the Inspectors?

A. No. Captain Whitney asked me if it was an angle of about 22° and I said about that.

Q. Then you wish to say you did not testify as already read?

A. No sir, I did not testify that way.

Q. You further testified, did you not, before the Inspectors as follows:

"Q. As he was crossing your bow from port to starboard, did he appear to be coming closer?

"A. No sir. I held my course, I was just about in the right place to haul in, in my judgment, I was keeping run of that fellow to see the way he was coming."

A. I did.

Q. That is the way you testified?

A. Yes sir.

Q. After the collision or after you got clear of the Kitsap you were heading southwest, were you not?

A. Yes sir.

Q. And then when you started for the dock you put

your helm to starboard and going slow you made a complete turn to go back or half turn?

A. I swung around to the dock.

Q. You swung back to the dock?

A. Swung back to the dock, east by north.

Q. You swung from southwest where you were heading when you left the Kitsap to a little northeast by east or a quarter east? back on to your course?

A. Northeast by east half east.

Q. You stated captain, in your opinion, that the Kitsap, from the sound of her whistle, must have been south of the Grand Trunk dock?

A. Yes sir.

Q. About how far south would you judge she was?

A. Well, I would not say; by the sound of the horn on the Colman dock she would be south of the Grand Trunk dock.

Q. Was she south of the horn?

A. Well, she was just about in line with the horn.

Q. Captain, what revolution did you say the Indianapolis made when running full speed?

A. 154.

REDIRECT EXAMINATION:

Q. (Mr. Bronson). Captain, Proctor for the libellant asked you with reference to the Indianapolis, after the collision occurred, you put the bow of the Indianapolis up against the Kitsap and kept her there?

A. Yes sir.

Q. What was the purpose of that?

MR. MERRITT: I object as irrelevant and immaterial.

A. So that the passengers could be transferred.

Q. Was it in order to tow the Kitsap or anything of that kind?

A. No sir.

Q. Would it have any material effect in towing her or in changing her position?

A. Hardly moved her, under dead slow bell.

Q. You were just keeping the stem of the Indianapolis against the Kitsap?

A. Yes, sir, holding her there, yes.

Q. Counsel also asked you whether or not you put your helm hard aport?

A. I had it hard aport.

Q. What would be the purpose in that?

A. It was to hold her in the hole.

Q. Simply to keep the Indianapolis' stem in the hole?

A. Yes sir. I did not know how much of a hole she had in her hull, and if I put it to starboard she would pull herself out probably and get away before the passengers were off. They had not got a line ready and so I had her under a dead slow bell, it hardly moves anything, hardly takes up the slack on the line on her.

Q. It would not have the effect of holding a vessel like the Kitsap broadside on the course, the Indianapolis' stem pushing the Kitsap any distance through the water?

A. No, not in ten minutes, I should say not.

Q. Do you know what the tide was?

A. Strong ebb.

Q. The tide was strong ebb, that would be setting north?

A. Yes sir.

Q. Would it be sufficient to overcome the set of the tide?

A. Just about hold her. She might carry her a little but not much. I do not think she could hardly stem the tide with her.

Q. If the Kitsap had been one minute on the course that she was pursuing when she hove in sight, would you say she had been south of the Grand Trunk dock and also the Colman dock?

A. Yes sir.

Q. (Mr. Merritt). The speed that the Indianapolis would make in moving under this dead slow bell against the Kitsap, was sufficient to turn both vessels clear around so that she was heading opposite?

A. It was on account of holding her stem—

Q. Whatever speed it was?

A. I did not make a complete circle.

Q. You were heading in the opposite direction?

A. Heading southwest.

Q. (Mr. Bronson). Will a vessel lying out in the water that way naturally turn with the set of the tide?

A. The way the Kitsap was lying across the Indianapolis' bow, it was just the same as if she had her bow on to a dock with a line on and was working the engines around. It is the same proposition.

Q. Did you see the master of the Kitsap when he came aboard the Indianapolis?

A. A few minutes after he had appeared, I saw him aboard and then he spoke to me.

Q. Did you see him when he came aboard?

A. Not over the rail, no sir.

Q. You do not know whether he came ahead of the passengers or not, of your own knowledge?

MR. MERRITT: I object as irrelevant and immaterial.

A. No sir, I do not. I know there were persons on the ship when he was talking to me, people on there, I do not know whether they were passengers or crew.

Q. After the accident took place?

A. Yes sir.

Q. Was he on the Indianapolis then?

A. Yes sir.

Q. (Mr. Merritt). You say there were persons on the Kitsap?

A. Yes sir.

Q. You refer to the engineer, the captain's brother?

A. There were several.

Q. Were there seven or eight?

A. Yes, eight or nine, some were getting the mail sacks. Four or five stood on the Hurricane deck trying to get a stern line out.

Q. Were there sailors on the Kitsap?

A. I do not know whether they were sailors getting the lines out. I do not know who was on the hurricane deck.

Q. Where were you all the time?

A. Stood on the bridge of the pilot house.

Q. You know there were seven or eight people on the Kitsap after the master went on your ship?

A. When he was talking to me, yes.

(Testimony of the witness closed.)

HOLM C. ANDERSON, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). What is your business?

A. First officer.

Q. You were first officer on the Indianapolis last December?

A. Yes sir.

Q. Did you bring the Indianapolis from Brown's Point to Duwamish Head?

A. Yes sir.

Q. And turned her over to Captain Penfield?

A. Between Alki Point and the bell buoy.

Q. You turned her over to captain Penfield?

A. Yes sir.

Q. What did you do then?

A. I slowed down.

Q. After you turned her over?

A. I went out of the pilot house.

Q. Went below?

A. On the deck.

Q. Where was the fog?

A. The fog was just off the bell buoy, just starting off the buoy.

Q. What was it, solid or in streaks?

A. No, just in streaks. See pretty well for sometime.

Q. Now what speed did the Indianapolis take when Captain Penfield took her?

A. Slow.

Q. What speed did he give to her then?

A. I don't know, I went out of the pilot house.

Q. You do not know what the signals were?

A. No.

Q. What was the first you saw or what was the first you heard or what happened about the Kitsap?

A. On the port bow.

Q. What did you hear, a whistle?

A. Yes sir.

Q. On the port bow?

A. Yes sir.

Q. And what next did you hear?

A. I heard the whistle off there again.

Q. Where did you next hear the whistle?

A. On the port bow.

Q. How many whistles did you hear on the port bow?

A. Two.

Q. Then when did you hear the next one?

A. On the starboard bow.

Q. Do you know what speed the Indianapolis was making, what speed her engines were running under?

A. No sir.

Q. You do not know any of her speeds at all?

A. No sir.

Q. You did not hear the telegraph, or any of the signals of the captain?

A. The only signal I heard was half speed astern.

Q. You were not paying particular attention to the engine signals?

A. No sir.

Q. Well, after you heard the whistle on the starboard bow then what did you hear?

A. I heard a couple of whistles on the starboard bow before I seen the lights.

Q. What position did these whistles on her starboard bow appear to take, were they changing position or in the same position?

A. No, just about a point on the starboard bow, she seemed to keep that.

Q. What was the first you saw of the Kitsap?

A. The range light and the headlight.

Q. About how far away?

A. Oh, I do not know. It would be about 50 feet or so, I could not tell just exactly.

Q. Was that after you heard the engine bell signal astern?

A. It was just when I seen the light was half speed astern?

Q. The same time?

A. As near as I could tell.

Q. What course did the Kitsap appear to be making at that time with reference to your course, was it going across your bow or head on?

A. Same course, she turned across us.

Q. Was that across your bow?

A. Yes sir.

Q. Would she appear to be crossing pretty near at right angles or at as sharp angle?

A. No, just came a little on the starboard bow. Some little angle, 20° or so, as near as I can tell from the lights.

Q. You could see the head light and the range light?

A. Yes sir.

Q. Could you see what speed she was making?

A. No, I could not see, but I saw the wash on the bow, she was going at a good clip.

Q. You could see the wash on the bow.

A. Yes sir.

Q. Would that indicate she was going slow or fast?

A. I guess she was going fast.

Q. Was she going at a speed that a vessel of her class could ordinarily stop it between yourself and her?

A. No sir, she could not stop, not in that distance.

Q. When the actual collision took place, where was the position of the two boats, where did they strike?

A. Struck on the port bow close by the pilot house.

Q. Was she coming at the same angle or was she swinging?

A. She was swinging as soon as she hit.

Q. Which way did she strike?

A. Swung around to starboard side.

Q. Swung to the starboard side?

A. To our starboard side.

Q. Did the Indianapolis have considerable way on her when the collision actually occurred?

A. No, I think she was stopped.

Q. Could you hear the horn on the Colman dock?

A. Yes sir.

Q. From the course you steered from the bell buoy to the Colman dock, and the sound of the horn, could you tell whether or not you were on your ordinary regular course to the Colman dock?

MR. MERRITT: I object, the witness has not shown the course he steers from the bell buoy.

Q. How long have you been on the Indianapolis?

A. Three years.

Q. As first officer?

A. As first officer.

Q. How many years experience have you had?

A. Thirty years.

Q. As first officer how long?

A. My papers are about 12 years old I guess.

Q. 12 years as first officer. You are familiar then with the course you steer both in foggy and clear weather?

A. Yes sir.

Q. Now answer the question, whether or not you could tell whether or not you were approximately on your course? Your ordinary course?

MR. MERRITT: I renew my objection.

A. Yes, I could tell, from the whistle ahead and the Colman dock trumpet, she was on her course.

Q. Can you state from the course the Kitsap was steering and the position of the trumpet on the dock and your own position, whether or not the Kitsap, if she had been steering a course which she was on when she loomed in sight a minute, had been south of the Colman dock?

A. Yes sir, she had.

Q. How long had the Indianapolis been on that run, approximately?

A. Three years in August.

Q. Had she been on that same schedule time, all the time, I mean except when she might have been laid off, was that her regular schedule time?

A. Yes.

Q. Was she very regular about her trips?

A. Yes sir.

Q. She was due to arrive at the Colman dock at just about what time?

A. Oh, about 4:40 or 4:45. It was clear all the way down.

Q. Was that her regular and ordinary time for arrival?

A. Yes sir.

Q. And had been for several years?

A. Yes sir.

CROSS EXAMINATION:

Q. (Mr. Merritt): Mr. Anderson, when you first heard the Kitsap's whistle, you say it was on the port bow?

A. Yes sir.

Q. About how long was that before the collision?

A. Oh, about a couple of minutes.

Q. Could not have been more than that?

A. No.

Q. You are sure about that?

A. Yes, it could not have been more than a couple of minutes.

Q. And you heard the second whistle from the Kitsap on your port bow?

A. Yes sir.

Q. About how far were these whistles apart?

A. Oh they sounded regularly, how many seconds it might be I did not count.

Q. 15 seconds?

A. No, not that far, 10 or 15 seconds apart.

Q. Then the next whistle you heard was on the starboard bow?

A. Yes.

Q. You heard two whistles on the starboard bow?

A. Two or three of them I think.

Q. They were about the same distance apart?

A. Just about, yes.

Q. And then the collision occurred?

A. Yes sir.

Q. Now these whistles that you heard on the port bow, you say were about a point off your port bow?

A. The first I heard, just about a point or a point and a quarter.

Q. Could not have been more than a point and a quarter?

A. No sir.

Q. You were out on the bow of the Indianapolis?

A. Yes sir.

Q. These whistles you heard on the starboard bow were a point off the starboard bow?

A. Yes.

Q. About the same direction?

A. Yes sir.

Q. Did not seem to vary at all?

A. No sir, did not vary at all.

Q. Now about what angle in degrees did the two ships come together?

A. Oh, I do not know, just about 20 or say 25.

Q. 20 or 25°?

A. Yes, just about that angle.

Q. The only bell you heard on the Indianapolis was the half speed astern?

A. Yes sir.

Q. That was just about a second before the collision?

A. Just as soon as I saw the light.

Q. As soon as you saw the light you heard the half speed bell—

A. Yes.

Q. And then the collision occurred almost immediately afterwards?

A. Yes, almost immediately.

Q. The bells were given on the Indianapolis by telegraph?

A. Yes sir.

Q. How could you hear what that signal was?

A. I heard the captain sing it out to them.

Q. That is all you heard?

A. That is all I heard.

Q. That was just as you saw the lights from the Kitsap?

A. Yes sir.

Q. You heard the captain sing out half speed astern?

A. Yes sir.

Q. You did not hear any bells at all?

A. No sir.

Q. You do not know how they were answered?

A. No sir.

Q. Could you hear the bells in the engine room from where you stood?

A. No.

Q. How far could you see in the fog at that time?

A. Oh, at that time I could see ahead about 25 or 30 feet. Of course lights you could see further off than that.

Q. You could see the hull about 25 or 30 feet.

A. About 25 feet. I could see the wash too.

Q. You are sure you could see the wash?

A. Yes sir.

Q. You are sure it was not the wash from the Kitsap backing up?

A. Oh no sir, she could not be backing up the way she came there, because I ran away, I thought she was going to hit further aft but she just swung clear of the stack.

Q. The Indianapolis struck the Kitsap just abaft the pilot house, didn't she?

A. Yes sir.

Q. And you saw the cut, did you, that was made there?

A. Yes, I saw the cut.

Q. Went in through the cabin of the Kitsap?

A. No, forepart of the pilot house.

Q. Went clear in to that?

A. Yes sir.

Q. Then the Indianapolis backed away?

A. Backed away.

Q. Did you hear any signals given on the Indianapolis after that?

A. No sir.

Q. As the Indianapolis struck the Kitsap, the Kitsap swung around to the starboard did she?

A. Swung around to the starboard, yes.

Q. You say you could hear the horn on the Colman dock?

A. Yes sir.

Q. How many points was that?

A. That was about three quarters of a point on the starboard bow, I should judge about that.

Q. In your opinion the Kitsap had been south of the Colman dock?

A. Well, if she had been running a minute—

Q. You do not know whether she had run a minute or not?

A. No.

Q. You do not know whether she had been running a minute from that direction or not?

A. No sir.

Q. You do not know whether as a matter of fact she had been south of the Colman dock?

A. No sir.

Q. Or whether south of the Grand Trunk dock. So you do not know of your own knowledge whether she had been south of the Grand Trunk dock?

A. Evidently the whistle was south of the Grand Trunk dock, that is south of the Colman dock.

Q. You are giving this opinion based entirely on the sound of the trumpet on the Colman dock, from where you were?

A. Yes sir.

Q. This was a very heavy fog?

A. That is the only thing you could go by in the fog.

Q. It was a very heavy fog at this time?

A. It was just judging by the whistles.

Q. It was a very heavy fog at this time?

A. Part of the time, yes.

(Testimony of witness closed).

Hearing adjourned, to be resumed by agreement.

Seattle, Washington, May 5, 1911.

Continuation of proceedings pursuant to agreement.

PRESENT: Mr. Merritt, for the libelant; Mr. Bronson, for the Claimant.

FRANK E. BURNS, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. You are connected with the operation of the steamer Indianapolis, and were at the time of the collision with the Kitsap?

A. Yes sir.

Q. Where were you on the afternoon of the collision with the Kitsap, just previous to the accident?

A. At four o'clock I was on the end of the Colman dock.

Q. What was the occasion of your being there?

A. On account of the fog, the Kulshan, Indianapolis and Telegraph all being out.

Q. Well now, did you see the Kitsap just previous to the collision with the Indianapolis?

A. Yes sir.

Q. About how long previous, as near as you can tell?

A. Oh, I should judge two or three minutes, I would not say positive.

Q. Whereabouts?

A. Passing the end of the Colman dock.

Q. Which way was she headed?

A. South, down the harbor.

Q. Which way, relative to a line projected out parallel with the south line of the dock?

A. It was right across.

Q. About at right angles?

A. Right angles.

Q. How far away was she as near as you could tell, just as near as you could approximately?

A. Approximately a hundred feet, perhaps a little more.

Q. What was the condition of the weather, was it solid fog or thin?

A. No, the fog was running in banks, clearing and then thickening. Clearing and then thickening; sometimes you could see the Grand Trunk dock 120 feet away, and sometimes you could not.

Q. Did you see whether the Kitsap was going slowly or rapidly?

A. Oh I should judge—we had a discussion about it at the time—she was coming along, I should judge she was going 10 or 12 miles an hour, to the best of my judgment.

Q. How was she going relative to other vessels that were proceeding in the fog?

A. There had been a half a dozen vessels passing, going slow. She was moving twice as fast as they were I should judge.

Q. What whistles or signals did you hear Mr. Burns?

A. When?

Q. Subsequent to the time when the Kitsap passed south?

A. We heard her whistle coming down the front, and we had some discussion as to what steamer it was. There was captain Brydeson, Mr. Tucker, Fred Gleason and myself. Also a man there blowing the fog horn. Captain Brydeson thought it was the Hyak and others thought it was the Kitsap.

Q. What other whistles did you hear from the Kitsap after she passed? Did you hear other signals from the Kitsap?

A. No, just fog whistles.

Q. You knew the Indianapolis was due, of course?

A. Yes, about due.

Q. And did you hear any danger signal from any boat subsequent to the time that she had passed?

A. Yes, I heard the Indianapolis blow three whistles.

Q. Did the course which the Kitsap took in going across

the dock, take her across the course of the Indianapolis on her regular course from Duwamish Head to the Colman dock?

A. It did. It took her south of the Indianapolis' course.

Q. And then would it require her to again cross that course in going on her northern trip?

A. Yes sir.

Q. Was the steamer Telegraph in her slip or had she arrived when the Kitsap went south?

A. No sir.

Q. Did you hear the officers of the Kitsap at the hearing before the United States Inspectors, testify with reference to the Telegraph?

A. Yes sir.

Q. What did they testify?

MR. MERRITT: I object as incompetent, irrelevant and immaterial. No foundation laid for the testimony.

Q. I am referring to the master of the Kitsap.

A. Yes sir.

Q. Is he the one you refer to?

MR. MERRITT: I renew my objection.

Q. What did he testify to?

MR. MERRITT: The witnesses were not asked on their examination with reference to any testimony that they had given before the Inspectors, or any one else, or given any opportunity to either admit or deny that they so testified, or to explain such testimony and I object to it.

A. He testified that he knew that the Telegraph had landed at her berth previous to his starting south.

Q. I will ask you to examine the photographs which have been marked Claimant's identifications 5, 6, 7, and 8, and ask you to state what they are, who had them taken, etc.?

A. The photographs of the dry dock raising the Kitsap were taken from the roof of the dock, so as to show the tower on the north side of the dock when taken, and back from the face of the dock about twenty feet.

Q. And showing the dry dock which raised the Kitsap?

A. Yes. And the Indianapolis coming on her regular course.

Q. And how were these pictures taken in point of time, as compared with the numbers on the pictures. Were they taken in the order which they are numbered?

A. Yes sir. As the steamer came in from the point she kept getting closer to the dock. Five was taken first and eight was taken last.

Q. And was the steamer on her regular course when these pictures were taken?

A. Yes sir.

Q. Was her course altered so as to give any different view then?

A. No sir. Nobody knew about it.

Q. Did the master know the pictures were being taken?

A. No sir.

Q. That has the effect of showing the steamer more and more to the right as the pictures progress, what is the reason of that?

A. She changed her course the least bit to the north to get around where the Kitsap was.

Q. Now do all of these pictures show the relative line of the tower of the dock correctly, to the position of the floating dock and the boat?

A. These were all taken with the camera in the same position.

Q. Is the light colored line to the right of the picture just before the extreme right, the line of the tower of the dock?

A. Yes sir.

Q. How does that correspond as to being parallel or at an angle from the line of the dock, approximately, the side lines?

A. Just the same.

Q. It is parallel with the side lines of the dock?

A. Yes sir.

Q. When were these pictures taken relative to the time

when the dry dock first got hold of the Kitsap? Do you remember whether or not the Kitsap was raised and towed a little ways and let go?

A. It was when they first got hold of it.

MR. BRONSON: I offer the photographs in evidence.

MR. MERRITT: I have no objection, except to the notations on the photographs. We object to those.

MR. BRONSON: I think they are immaterial.

MR. MERRITT: I presume the Court would pay no attention to these notes.

Q. These pictures were taken on the 13th day of January, 1911, under your direction?

A. Yes sir.

Q. You were present, were you?

A. Present all the time.

Q. Taken by Webster & Stevens, photographers?

A. Yes sir.

MR. BRONSON: I am willing to waive any writing that appears on the photographs.

Photographs marked Claimant's exhibits 5, 6, 7, and 8, filed and returned herewith.

CROSS EXAMINATION:

Q. (Mr. Merritt). You are general manager of the company that owns the Indianapolis?

A. Yes sir.

Q. Were at that time?

A. I was at that time.

Q. You say you were standing on the end of the Colman dock?

A. Yes sir.

Q. What part of the dock, inside or outside?

A. The platform outside on the end of the dock.

Q. Of the second deck?

A. Of the second deck, where we always stand in a fog.

Q. You saw the Kitsap come down by the dock?

A. Yes sir.

Q. What time?

A. I did not make a note of the time. I should judge it was about 4:42 or 4:43, two or three minutes after the Indianapolis was due. She was due at 40.

Q. Could not have been before that?

A. No, I am positive of that.

Q. And she was about how far from the dock?

A. Well, I should judge from looking at her as she went by the end of the dock, she was probably 100 or 125 feet.

Q. It was very foggy that day?

A. No, it was foggy.

Q. Some of the time you say you could not see the Grand Trunk dock?

A. Yes and other times you could see it plain.

Q. Some of the time you could not see the lights on the Grand Trunk dock?

A. You could see a dim light.

Q. And the Kitsap was headed square across the end of the dock?

A. As near as you could tell she was at right angles to the end of the dock.

Q. You are sure she was not turning at that time?

A. Did not look to be turning.

Q. She was going in your opinion 10 or 12 miles an hour?

A. Yes sir.

Q. When did you first see her?

A. Why, I first saw her when she went by; heard her whistle.

Q. You heard her whistle before that?

A. Yes, heard her whistle coming down the water front.

Q. How long did you see her after she passed?

A. Oh, altogether I suppose we saw her for a minute, half a minute or a minute.

Q. You mean to say from the time you first saw her until she passed out of your sight, you think it was a half a minute or a minute?

A. Altogether I do not think I saw her over a minute.

Q. She was still headed the same course until she passed out of sight?

A. As far as I could tell she headed right down the bay.

Q. How long after that before you heard these danger signals you speak of?

A. I would not want to say positive. Three or four minutes. I should judge that any way. I would not say positively.

Q. You said in your direct examination it might have been two or three minutes.

A. I still say approximately three minutes. I would not say positively. We were standing on the end of the dock looking out to the westward, and I could not gage the time that elapsed.

Q. What direction did you hear it?

A. The three whistles were directly off the end of the dock.

Q. Directly off the end of the dock?

A. Yes sir.

Q. About how far should you judge these whistles were when you heard them?

A. I could not pass on that. The fog was running in banks and sometimes it would sound further and sometimes sound closer.

Q. They could not have been north of the end of the Colman dock?

A. It might have been, but I just told you it appeared to me—

Q. It might have been some distance north of it for all you could tell?

A. All I could tell you is that it appeared to me to be right off the end of the dock.

Q. Now referring to Claimant's exhibit 4, being the chart, I call your attention to the dock which is heaviest on the south, this is the Colman dock? Is it not intended to represent the Colman dock?

A. That is apparently the Colman dock.

Q. The heaviest shaded dock is the Colman dock and you were standing on the end of that?

A. Yes sir.

Q. And the whistles you heard appeared to be directly off the end of the dock?

A. Yes sir.

Q. And you could see how far?

A. I could not say how far.

Q. And how long was it after you saw the Kitsap until you heard the whistles?

A. As I say approximately three minutes, to the best of my judgment.

Q. Did you see any other vessels come by?

A. I saw some tug boats go by. There were several boats went by the end of the dock previous to that time. After that we did not pay attention.

Q. Did you hear whistles from the Kitsap after that?

A. I heard the one whistle going out, that is the only whistle we heard from the Kitsap, that is the fog whistle.

Q. You would have heard the if she had blown any?

A. I do not see how I could overlook it.

Q. That is the only whistle you heard?

A. From the Kitsap, was the fog whistle, one whistle.

Q. That was before or afterwards?

A. Before and after.

Q. You say the one whistle?

A. I mean the fog whistle, is one long whistle.

Q. How many of these did you hear?

A. I could not say.

Q. Could you say that you heard more than one?

A. Oh yes, I heard more than one, how many I could not say. There was the Telegraph, the Kulshan and the Indianapolis.

Q. The Telegraph was not in yet?

A. Came in four or five minutes later. After the Indianapolis had blown the five short blasts.

Q. The Telegraph came in again?

A. Yes, and we sent her out.

Q. She came by the Kennedy?

A. I do not know how she came by the Kennedy, the Kennedy was going out on the southerly circle.

Q. Had the Kennedy gone at that time?

A. Yes sir.

Q. You are sure about that?

A. I am not sure about that.

Q. Is it not a fact that the Telegraph came along the starboard side of the Kennedy?

A. No. The Telegraph never got up to the dock at all. I hailed the Telegraph and sent him back.

Q. How close did he get to the dock?

A. Oh, probably a 100 or 125 feet.

Q. That is as close as she got to the dock or to the Kennedy?

A. Yes. I do not know how close she got to the Kennedy. I know about the dock.

Q. You do not know whether the Kennedy had left the dock at the time she got to that point or not?

A. No.

Q. Did the Telegraph come up to the south or north side of the dock?

A. She came off the end of the dock when she showed up.

Q. She was turning in?

A. She comes up right direct, she does not have to turn.

Q. Is her berth on the north side?

A. It is on the north side; she came right for her berth.

Q. That is also the place the Kennedy berths?

A. No, the Kennedy is on the south side.

Q. Was she headed for the dock?

A. She was headed directly for her berth.

Q. You stopped her?

A. Hailed her as soon as we could get her with a megaphone and told her to go back and see what the trouble was.

Q. Which way did she turn going back?

A. I could not tell you. I could not see. She backed out and I do not know where she turned after that.

Q. You could not see which way she was backing, turning?

A. I could not say anything about that at all.

Q. Now when you heard these three blasts from the Indianapolis, had the Kennedy gone at that time?

A. I could not tell you.

Q. Do you know whether it was before or after time for her to go that you heard it?

A. It was after her time. She was due out of there at :30.

Q. You could not tell how long?

A. No.

Q. And that was after the time that the Indianapolis was due in?

A. Yes sir.

Q. She due out at :40?

A. Yes sir.

Q. And The Kennedy leaves at :30?

A. The Indianapolis takes her berth.

Q. And she is due at :40 and it was some two or three minutes after that that you heard these blasts?

A. Yes sir.

Q. Are you not mistaken, Mr. Burns, about the Kennedy leaving at :30, is it not :40?

A. No sir, I am not mistaken. I had the time changed myself.

Q. At that time?

A. Before that time, so as to keep that berth clear and not have trouble about the two boats coming in and out.

Q. You testified about some testimony given by Captain Hanson before the Inspectors. What was that testimony, Mr. Burns, the questions and answers?

A. I could not give the questions and answers off hand. I sat and listened to him testify that the Telegraph was in at her berth before he started out from pier 3.

Q. You swear that captain Hanson so testified?

A. Yes sir, I will.

Q. Before the Inspectors?

A. Before the Inspectors. I sat there and heard it.

Q. Then if the stenographic record don't show that testimony—

A. —Then the stenographer did not take the testimony down, because he testified to that positively. And I am a stenographer myself, and I know when they miss testimony myself once in a while.

Q. In the photographs that have been introduced in evidence, the camera stood on the southerly side of the Colman dock?

A. Yes, the southerly side of the end of the Colman dock.

Q. And about how wide is that end there?

A. Where we stood it was about 22 feet wide and 20 feet back from the end.

Q. Twenty feet back to where the camera stood?

A. This shows the dock, that is a matter of identification is all.

Q. The dock slants along there?

A. Yes it is an angle.

Q. And it was set back about 20 feet from the end, alongside the side?

A. Just about, to get the sight—

Q. How far was the camera set from the side?

A. How do you mean?

Q. From the side?

A. The dock is about this angle. The post of the tower is there.

Q. I mean how far from the side of the dock—the dock runs back.

A. No, this is the edge of the dock, say 10 feet. The tower is built in this way, and then it is across that way. Say ten feet from the angle of the face of the—

Q. From the face of the angle of the dock, that is what you mean?

A. Yes.

Q. Ten feet from the face of the angle of the dock.

A. Yes sir.

Q. Pointed toward the corner of that angle?

A. Yes sir.

Q. The outer corner of the angle?

A. Yes sir.

Q. It was a clear day, of course?

A. Oh, absolutely clear day.

Q. And the Indianapolis was on her clear weather course at that time?

A. Regular course coming into the dock. As I said before nobody on the Indianapolis knew anything about the photographs were to be taken.

Q. What date did you have the Kennedy's schedule changed as you testified?

A. I cannot tell now. I can get it for you if you want it.

Q. Could you tell how long before the 15th?

A. I think the 20th of December. The boat was delayed about getting the crowds on.

Q. That would be a few days—

A. Before the Christmas holidays.

Q. That was changed to :35?

A. Changed to :30 and afterwards that winter, we run it for about three or four weeks and changed it back to :35 again so as to keep out of the way of the two boats, one could get out and the other could get in the berth.

Q. At the time you were out there did you see the name of the vessel you were looking at?

A. What vessel?

Q. The vessel that went by the end of the dock, did you see the name?

A. I could not see the name of any vessel.

Q. You did not read the name of any vessel then?

A. No.

Q. Did you see the Reliance that day?

A. I would not swear that I did.

Q. You will not swear that you did not?

A. No.

Q. You mean at this particular time?

A. He is talking about boats previous to the Kitsap.

Q. (Mr. Merritt). I say any time.

MR. BRONSON: Are you asking the witness if he

knows that the boat that he saw was the Reliance or the Kitsap?

MR. MERRITT: I asked him if he saw the Reliance at that time and he says he don't know whether he did or did not.

Q. Do you know the Reliance's whistle?

A. I think I could pick out any of the boats' whistles.

Q. Did you hear the Reliance whistle at that time?

A. I did not hear her at that time.

Q. Did not hear her at any time?

A. I have been along the water front since 1895 and I know all the boats by their whistles.

Q. And the only vessel of the size you say passed this dock was this one?

A. She was in plain view of the dock, that is she went by.

REDIRECT EXAMINATION:

Q. (Mr. Bronson). I do not know whether counsel meant to ask you whether you confused the Reliance with the Kitsap or not, but I want you to state whether or not you did.

A. I will state positively that the boat I saw was the Kitsap, and no Reliance about it.

Q. And what you understood him to ask you about was whether or not you had seen the Reliance that day?

A. I do not remember having seen the Reliance that afternoon.

Q. Was there any doubt in your mind as to the vessel you saw when she went by?

MR. MERRITT: I object as incompetent, irrelevant and immaterial and calling for a conclusion.

A. No sir.

Q. Was your attention particularly called to the Kitsap Mr. Burns?

A. Yes sir.

Q. Whats facts called it to your attention?

A. The discussion as to which boat was blowing, the

Kitsap or the Hyak when she was coming down the water front.

Q. Before you saw her?

A. Before I saw her, I will put it that way.

Q. Was the fact that she was steering the course which she was and the speed she was going, did that affect you in any way in connection with the Indianapolis coming in?

A. Yes sir.

Q. What effect did that have upon your mind?

A. It made us notice what boat it was. I got a good look at her.

Q. Did you consider that a matter that involved more or less hazard?

MR. MERRITT: I object as immaterial and irrelevant.

A. Yes sir.

Q. (Mr. Merritt). You say you discussed the question whether it was the Kitsap or the Hyak?

A. When she started to blow, when we first heard her.

Q. Do you know the Hyak's whistle?

A. Yes sir.

Q. And it is nothing different from the whistle of the Kitsap?

A. The discussion was between Captain Brydeson and Tucker.

Q. You know the difference when you hear them?

A. I can tell the difference between whistles. Some of them there is only a half note between them, like the City of Seattle and the Dolphin, and I can tell which one of them whistles every time.

Q. You could tell the difference between the Kitsap and the Hyak?

A. I would not say that close, there was a discussion—

Q. Did it make any difference as to this day, you say you were afraid of some danger, would it make any difference whether it was the Kitsap or the Hyak?

A. No. The Kitsap, some one telephoned over that the Kitsap had just run down a launch.

Q. And you were afraid she might run down the Indianapolis?

A. Not a bit of it.

Q. And if she was the Hyak there was no danger?

A. No, not about that, that just brought up the discussion.

Q. How long before you saw this boat had you heard this discussion about her running down the launch?

A. Some one telephoned over to the dock that the Kitsap had just run a launch down. Some one phoned over from pier 4.

Q. How long before this discussion?

A. Just within a minute or two or three minutes, four minutes, something like that. Just a few minutes.

Q. Before you heard this whistle?

A. That is when the telephone message came.

Q. And so you wondered when you saw this whether it was the Hyak or the Kitsap?

A. No. I told you there was a discussion between two or three people present which boat it was coming when we heard her whistle. I did not take part in the discussion.

Q. And from the fact that she was going down south straight along the face of these docks made you think there was some danger there?

A. Yes, there was a lot of danger. There was no question about the danger.

Q. That is danger to the docks or—

A. Danger to anybody that was in a boat, in that boat or some other boat.

Q. The only interest you had was in the Indianapolis?

A. The interest I had was all the boats in the harbor. We had three out there to come in, and people on the steamers.

Q. (Mr. Bronson). How long have you been in the operation of boats?

A. Since 1890. And two years previous to that on the Great Lakes.

Q. And you have been general manager of the Alaska Steamship company, operating a large fleet of boats?

A. Yes, sixteen steamers in the Alaska Steamship company.

(Testimony of witness closed).

CAPT. CHARLES BRYDESON, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). What is your profession?

A. Steamboat captain.

Q. How many years have you been master of vessels?

A. Twenty years.

Q. How much of that on Puget Sound?

A. All on Puget Sound.

Q. Twenty years you have been master of vessels on Puget Sound?

A. Yes sir.

Q. Where were you on the afternoon of December 14th, the afternoon that the Indianapolis and the Kitsap were in collision out here in the bay?

A. I was out on the end of the Colman dock.

Q. Just previous to the accident?

A. Yes sir.

Q. What was the condition of the weather?

A. Well, it was foggy.

Q. How was it, solid fog?

A. No, it was in lumps, just rolling you know; one minute it was heavy fog and the next minute you could see 100 feet or further.

Q. Did you see the Kitsap on the day in question, before the accident?

A. Yes sir.

Q. Where was she when you saw her?

A. She was off the Colman dock.

Q. Which way was she headed?

A. She must have been headed about south south west when I saw her.

Q. Had you heard her before you saw her?

A. Yes sir.

Q. About how far was she out, as near as you could tell,

as near as you could approximate it from where you were standing when you saw her, when she passed you?

A. Somewhere between 100 and 150 feet; hard to tell. That is about as close as I can come to it.

Q. What rate of speed would you say she was making through the water?

A. Well, I should say she was making 10 or probably better, 10 miles or more an hour.

Q. What appearance did she have of going through the water, as far as the water itself was concerned?

A. Well—What do you mean?

Q. Describe it, that is what the effect of the boat on the water was?

A. Well, the water was calm, of course; she was going through the water lively; she was going through the water about 10 miles an hour or better, and Mr. Tucker standing alongside of me said—

MR. MERRITT: I object to what he said.

Q. You need not testify to what he said.

A. I says she is going pretty lively. I told Tucker that fellow is running—

Q. Would the course you saw her take her across the course of the Indianapolis coming in on her regular course?

A. Yes sir.

Q. Then if the Kitsap was bound out to Paulsbo on her ordinary run, would she have to cross that course again?

A. Yes, she would have to make a half circle and cross it again.

Q. I hand you a paper which has been marked Claimant's identification 9, on which I have traced the Colman dock and the G. T. which stands for Grand Trunk, pier 3 and pier 4 and pier 5 with two boats lying alongside, and ask you if the line marked "course of SS. Ind." represents approximately the course of the Indianapolis as she approaches the Colman dock ordinarily, that is if it is a fair approximation?

A. Yes it is.

MR. MERRITT: He has not shown his qualification yet.

Q. What is your particular line of duty with the company?

A. I am port captain.

Q. You have charge of the despatching of the vessels away from the dock?

A. Yes sir.

Q. So that you know their courses?

A. Yes sir.

Q. Now, I will ask you if the tracing, which is marked "course of Dec. 14" is a fair approximation, as far as you saw it in front of the dock, of the course which the Kitsap was steering—not that it is absolutely accurate, but if it is an approximation?

A. Yes sir.

Q. I am not asking you with reference to any part of it you could not see, of course.

A. No. Yes, that is correct as far as I can tell.

Q. As far as you could see out here in front of the dock?

A. Yes sir.

Q. I will ask you if the Kitsap could have been steering a course at that time, which is marked throughout here as "ordinary course of K," if she could have been steering any such course as that on that day in question?

MR. MERRITT: I object as incompetent, irrelevant and immaterial as to whether she could have been steering that course.

Q. I will ask you then if she was steering a course which was in any manner the course marked "ordinary course of K?"

A. No sir.

Q. I will ask you if this tracing here is a fair approximation of the Colman dock and Grand Trunk dock and piers 3, 4, and 5, if it is a fair illustration?

A. Yes, I think it is. Only I think she was a little closer to the Grand Trunk dock than this is.

Q. I ask you with reference to the docks?

A. Oh, the docks, yes they are about right.

Q. Now I will ask you whether or not a vessel at the

north side of pier 4 and backing out to steer a course down Sound, would steer exactly the same course as a vessel backing out from the south side of pier 4?

MR. MERRITT: I object as incompetent, irrelevant and immaterial.

Q. I will ask you this, would a vessel ordinarily back out as far north, in backing from the south side of pier 4 as she would in backing from the north side of pier 4, before she would come ahead?

MR. MERRITT: I object as incompetent, irrelevant and immaterial.

A. No.

MR. BRONSON: I offer this diagram in evidence.

Q. (Mr. Merritt). You did not draw this?

A. No sir. This is the first time I have seen it.

Diagram marked Claimant's exhibit "9," filed and returned herewith.

Q. (Mr. Bronson). Did you hear any danger signal from the steamer Kitsap, captain, on the afternoon in question?

A. No sir.

Q. Did you hear her fog signals?

A. Yes sir.

CROSS EXAMINATION:

Q. (Mr. Merritt). Now you stood on the end of the Colman dock with Mr. Burns, did you?

A. Yes sir.

Q. Were you on the second deck outside?

A. Yes sir.

Q. You say you saw this vessel coming by within 100 or 150 feet of the Colman dock?

A. Yes sir.

Q. How was she headed with reference to the end of the dock?

A. Kind of an angle.

Q. Kind of an angle. What kind of an angle?

A. About a right angle.

Q. When you say a right angle across the dock, you

mean her broadside was to the face of the dock or to the end of the dock where you stood?

A. The broadside was showing to us, the corner of the dock.

Q. Where you stood?

A. Yes sir.

Q. There is a square face on the end of the dock there, showing a small square face?

A. On an angle, the face is an angle; that deck does not square with the dock.

Q. Does it come right to a point?

A. It comes to a point with a half-round, about half a dozen piles makes a half round.

Q. As showing in this direction it comes right to a point?

A. Yes sir.

Q. I am referring to exhibit 9. And you say she was headed square or approximately at a right angle with that point?

A. Yes, right broadside to that point.

Q. Right broadside to that point?

A. Yes sir.

Q. And then you would not say this dotted line, which is marked "course of Kitsap December 14," correctly represents the course she was steering as she passed you?

A. Pretty close.

Q. You say she was coming down from the south around—

A. No.

Q. How long did you see her?

A. Just about a minute or three quarters.

Q. Did she change her course after you saw her?

A. I think she was rounding all the time slow.

Q. You think so.

A. Yes sir.

Q. Did she change her course?

A. I could not tell whether she changed her course or not.

Q. So far as you saw she kept the same course as when you first saw her?

A. Yes sir.

Q. Broadside to where you stood?

A. Yes sir.

Q. And how long did you watch her, as long as you could see her in the fog?

A. Yes sir.

Q. And from the time you first saw her until she passed out of sight was about half a minute?

A. Sometime like that, three quarters of a minute. I do not think it was a minute.

Q. You think she was going some 10 miles or better at that time?

A. Yes sir.

Q. Now you know what the ordinary course, fair weather course of the Indianapolis is, don't you?

A. Yes sir.

Q. And she comes in a little north of the Colman dock in fair weather?

A. Yes, she heads just about at the corner of the Colman dock.

Q. And foggy weather she heads in more to the northward by the Grand Trunk dock, does she not, that is the next dock north of the Colman dock?

A. I do not know that she does. I never seen her come in in the fog any different, foggy weather she comes right straight for the dock.

Q. Just the same?

A. Yes sir.

Q. You know what the ordinary course of the Kitsap is when she backs away from pier 4 and turns on her course?

A. I have seen her do it.

Q. She ordinarily does not go south of the Grand Trunk dock, does she, in making a turn to go on her course for four mile rock?

A. She goes up to the Grand Trunk dock.

Q. But not south of it?

A. I have seen her go south of it also.

Q. But ordinarily she does not?

A. She is just about off the Grand Trunk dock when she makes the turn.

Q. When she makes this turn?

A. Yes sir.

Q. Now do you know what time this way?

A. Yes, it was something like a quarter to four or a little—

Q. You mean a quarter to five?

A. Yes. Or twenty minutes. I could not say to the minute.

Q. What time were you going by?

A. We go by the time down there.

Q. Colman dock time?

A. Yes sir.

Q. That time is set by the Western Union, is it not?

A. Yes sir.

Q. That is correct time?

A. Yes sir.

Q. The same time that the Indianapolis carries?

A. Yes sir.

Q. And it could not have been less than a quarter of five could it?

A. No.

Q. You are sure about that?

A. Oh yes; it was more than that.

Q. It was more than a quarter to five?

A. Yes, it might have been between a quarter and twenty minutes to five.

Q. You are certain it was about 20 minutes to five?

A. Yes sir.

Q. You are positive about that?

A. Yes.

Q. It was after the time that the Indianapolis was due?

A. Oh no, it was not after the time.

Q. She was due there at :40?

A. Yes, she was due there at :40, but she did not get in sometimes until a quarter, not to the minute.

Q. It was after that time anyhow?

A. Yes sir.

Q. Did you see the Kitsap?

A. Yes.

Q. Now did you see the name on the boat that you were looking at?

A. No sir.

Q. All you saw was a boat going by?

A. Yes, I saw the outline of her.

Q. Did you see any other boat that day going by there, about that time?

A. No I did not see any other boat going by, I saw some boats there.

Q. No large boats?

A.. No. Small launches and tugs.

Q. Did you see the Reliance?

A. No.

Q. Do you know the Reliance's whistle?

A. Yes sir.

Q. Did you hear the Reliance?

A. I did not hear her. I heard a good many whistles.

Q. How many whistles did you hear on the Kitsap?

A. Oh I heard four or five or something like that.

Q. When did you hear them?

A. Just after she started to come ahead, you know.

Q. From pier 4?

A. I heard her whistle blow.

Q. Did you hear her when she left?

A. No, I did not hear her when she left.

Q. Well, you say just after she started to come ahead?

A. Yes.

Q. How long was that before you saw her?

A. Just a minute.

Q. Could not have been more than that?

A. Might have been a half a minute.

Q. How many did you hear after that?

A. Just three or four whistles, something like that.

Q. How often were they blowing?

A. Well, she was blowing every minute any way.

Q. Might have been oftener than a minute?

A. Yes; might have been less or might have been more.

Q. The ordinary fog whistle, was it not?

A. Yes?

Q. And these ordinary fog whistles are very likely to be a minute apart?

A. Yes, depends. Of course in a harbor they blow the whistle shorter, oftener. Outside it is every two minutes.

Q. This exhibit 9 that you have referred to in your testimony, you did not draw that?

A. No sir.

Q. You do not know whether it was drawn to scale or not?

A. No sir.

Q. In fact, from the appearance, from what you know of the water front there, you would not say it was drawn to a scale, would you?

A. No, I do not think it is drawn to a scale, but you can tell what it is.

Q. And you do think, when you saw this boat that you say was the Kitsap, that she was closer in to the Grand Trunk dock and the Colman dock than appears by these dotted lines "course of Kitsap December 14?"

A. Yes. Not closer, I tell you this is my idea of the way she was headed when she went by the dock this way.

Q. You think she was headed with her stern just about the corner of the Grand Trunk dock?

A. Well, out from the face of the dock.

Q. Was the Kennedy at the dock at the time?

A. Yes.

Q. On the south side?

A. She was on the face.

Q. When you speak of the face you refer to these angles this line at the end of the Colman dock?

A. Yes sir.

Q. The Kennedy was there.

A. Yes sir.

Q. Was the Telegraph in?

A. No sir.

Q. Did she come in?

A. Yes, she came in.

Q. Came in alongside the Kennedy?

A. No she did not come in.

Q. Did not she come in on the starboard side of the Kennedy?

A. She came in this direction—

Q. Straight in from there and came up to the starboard side of the Kennedy did she not?

A. Up to the stern of the Kennedy.

Q. Clear up to her?

A. Yes.

Q. You say the fog was rolling?

A. Yes.

Q. There was no wind at that time, was there?

A. No, not much, no sir.

Q. In fact it was extremely thick weather?

A. Yes sir.

Q. One of the thickest days you have seen here on the Sound for a long time?

A. No, I have seen thicker than that.

Q. You do not often see fog as thick as that?

A. You get that often in the morning, you get a fog that you cannot see the Grank Trunk dock across.

Q. And part of the time this time you could not see it?

A. Yes, sometimes.

REDIRECT EXAMINATION:

Q. (Mr. Bronson). Captain, it is your idea, as I gather from your answers to counsel's questions, that she was probably swinging on her course as she passed?

A. Yes, I think she was.

Q. But it was not possible for you to determine absolutely?

A. I think she was swinging, I could not tell, but I think she was swinging.

Q. That is your idea that this dotted line here, which I

have traced on this exhibit 9, does not show the course enough to the westward?

A. No.

Q. That is it is a little too close to the dock?

A. Yes sir.

Q. It should be swinging out more?

A. Yes sir. It should be closer to the westward.

Q. How many degrees?

A. O, I think a point.

Q. One point to the westward of this course here.

A. Yes, one or two degrees.

Q. Have you any doubt in your mind as to what vessel went by?

MR. MERRITT: I object as irrelevant and immaterial.

A. No.

Q. You know it was the Kitsap?

MR. MERRITT: I renew my objection.

A. Yes sir.

Q. (Mr. Merritt). You think the Kitsap might have been swinging?

A. Yes, I think so.

Q. You have seen her back out and other small vessels back out from the docks there and turn on their course in the stream?

A. Yes sir.

Q. You never saw them make that turn at 10 or 12 miles an hour? They always make the turn at a slower speed than that?

MR. BRONSON: I object as incompetent, irrelevant and immaterial.

Q. I say the Kitsap does not ordinarily make the turn out at the rate of 10 miles or better an hour, does she?

A. Oh yes, she makes the turn all the time.

Q. Not at that speed?

A. 10 miles or better, yes.

Q. That is your opinion that she makes that turn at that speed?

A. Yes sir.

(Testimony of witness closed).

B. F. JACOBS, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). What is your profession?

A. Lawyer.

Q. Are you Commodore of the Tacoma Yacht Club?

A. I am at the present time.

Q. You are more or less familiar with shipping and ships then?

A. To a certain extent, yes. About ten years ago I had a license to run as pilot on pleasure steam yacht. Since that time I have been running pleasure boats every season.

Q. Were you on the steamer Indianapolis on the 14th day of December last, when she was in collision with the Kitsap?

A. I was on the steamer Indianapolis the evening she was in collision with the Kitsap, and my memory is that it was the 14th of December, but I am not absolutely certain of the date.

Q. You remember the occurrence?

A. I remember the occurrence very distinctly.

Q. Where were you when the Indianapolis rounded Duwamish Head coming into Seattle harbor?

A. I was on the boat deck on the starboard side, standing alongside of what is marked "working boat." Prior to that time I had been in the cabin, that is up to a short time before that time I had been in the cabin.

Q. What was the weather?

A. The weather was foggy as we left Tacoma. Cleared after leaving, that is comparatively clear after leaving Tacoma until we rounded Alki Point. Between Alki Point and Duwamish head we ran into a fog bank, at which time I went on the boat deck. And it was thick from there on in.

Q. Did you notice or pay attention to the operation of the Kitsap after she passed Duwamish Head?

A. The Kitsap I did not.

Q. The Indianapolis I should say?

A. I did, yes.

Q. What was the operation of the boat as far as you observed, how were her engines handled?

A. To the time we rounded the bell buoy—about the time we rounded the bell buoy she slowed down to I would say half speed or possibly slower. We ran ahead then at a slow speed for some little distance, just how far I could not say. I would say, oh, a mile, when the boat slowed again to a good deal slower than she had been going. We then went ahead and got down somewhere in the proximity of the docks, that is off the docks, when there seemed to be a good many whistles, and the boat stopped and slowed dead slow, and stopped and then reversed. I was paying particular attention, more attention to the whistles than I was to the speed of the boat until we got into immediate proximity of the docks, then I was watching both of them as closely as I could.

Q. Did you see the Kitsap loom up out of the fog?

A. I did.

Q. Did you observe the speed of the Indianapolis up until just at that time, so that you know?

A. I had. Yes I had observed the speed of the Indianapolis particularly for a few minutes prior to that.

Q. What was the speed of the Indianapolis just prior to the time the Kitsap loomed up out of the fog, that is was she going very fast or very slow, just describe it in your own way?

A. She had been going slow just before the Kitsap loomed out of the fog her engines were stopped, the boat was drifting without speed on the engines at all. It was then just about the time the Kitsap loomed up out of the fog, possibly just before, she was reversed.

Q. What would you say as to the way she was moving through the water, was she making considerable headway?

A. She did not make headway through the water, or she was not making considerable headway through the water. You mean at the time the Kitsap loomed up out of the fog or at the time of the impact?

Q. First at the time the Kitsap loomed up out of the fog?

A. She was making headway through the water but not at any considerable speed.

Q. That is you mean she was going slowly?

A. I mean she was going slowly.

Q. Now, Mr. Jacobs, as near as you can estimate it, how far away was the Kitsap when she first loomed out of the fog?

A. She was not very far when I saw her. I think I saw her as soon as I could, I will put it that way. I think she was—let me see—I would say she was less than 200 feet from where I was standing.

Q. And what was done with the engines of the Indianapolis when she loomed out of the fog?

A. They were reversed.

Q. She was then going astern?

A. The engines were going astern; the boat was not, but the engines were going astern.

Q. What would you say was the condition of the Indianapolis when the actual impact took place as to her movement in the water?

A. Well, at the time, my impression was that she was practically at a standstill. She might have been making a little forward progress.

Q. What was the apparent movement of the Kitsap through the water when you saw her first?

A. Well, I thought she was coming.

Q. You mean by that that she was making considerable speed?

A. I considered that she was making considerable speed.

MR. MERRITT: I object to the question and move to strike the answer of the witness as a conclusion.

Q. Just state it then, Mr. Jacobs, in your own way.

A. Well, it appeared to me that the Kitsap was running extremely fast with the thick condition of the weather and the proximity of other boats.

MR. MERRITT: I move to strike the answer as a conclusion and as incompetent and irrelevant.

A. I will strike the first part and say that she was going extremely fast considering the proximity of other boats.

MR. MERRITT: I move to strike the whole statement as not responsible to any question and purely voluntary.

Q. Which vessel would you say collided with the other, Mr. Jacobs, which was the moving body in the collision?

A. Well, I would say the Kitsap was moving the faster, decidedly the faster.

CROSS EXAMINATION:

Q. (Mr. Merritt). You were standing, after you left Alki, on the boat deck you say?

A. On the boat deck.

Q. That is the highest deck of the Indianapolis?

A. Yes, up on top where the boats are.

Q. On the starboard side.

A. On the right hand side, yes.

Q. How close to the pilot house?

A. I think in the vicinity of 20 feet aft of the pilot house, some where near that.

Q. Somewhere near the stack?

A. No, I think it is a little forward of the stack. Possibly right alongside the working boat.

Q. And on one side of you was the house there and on the other the rail?

A. Yes, the rail on the other side. I might say that what is called the working boat, that is the smallest boat they carry on the boat deck of the Indianapolis.

Q. Now do you know what time it was when you came out on deck?

A. No, I did not look at the time.

Q. You say that the Indianapolis was slowed down when was she slowed down first?

A. She was slowed down first about the time we ran into the fog near the buoy.

Q. How long after you left Alki?

A. That would be more of a guess than positive opinion. I should say about three or three and a half minutes.

Q. You did not see the bell buoy?

A. No, I did not see the bell buoy.

Q. It was too foggy to see it?

A. It was too foggy to see it. I heard it after we passed it.

Q. It was some little time before that that she slowed down?

A. I would not be sure just when she slowed down.

Q. Did you hear the bells given in the engine room?

A. No, I did not.

Q. You did not at any time hear any bells given in the engine room?

A. No, I did not.

Q. You could not hear the telegraph from where you stood?

A. No.

Q. Your opinion of the speed she was running at the different times, and what was done with the engine, is based entirely upon the feeling of the boat, is it not?

A. The speed of the boat through the water and the feel of the boat.

Q. The speed of the boat through the water and the feel of the boat. And the only way you could judge of the speed, whether it was half speed or what speed it was was by the feel of the boat going through the water?

A. Yes, feel of the boat and speed of the boat through the water.

Q. Do you know what half speed of the Indianapolis is?

A. Approximately.

Q. What is it?

A. Eight and a half miles.

Q. Do you know what full speed is?

A. About twice that.

Q. It is your opinion then that she slowed to the point that for sometime she was running half of her ordinary speed, half of her ordinary full speed, that is about half of 17 miles?

A. That would be my opinion.

Q. That would be your opinion as to what she did actually do, is that right?

A. Why yes, that is right.

Q. How long do you think that she ran at this rate of speed, eight and a half miles?

A. I should say two or three minutes.

Q. Now in referring to miles you mean statute miles or nautical miles?

A. Statute miles.

Q. And you should say for about two or three minutes, it might have been three minutes?

A. I do not hardly think so, because she slowed again.

Q. It was between two and three minutes?

A. I would not be right sure about the time. We were hearing whistles all the time, and whenever they would hear a whistle they would blow more frequent and the boat would slow down until they got a line on this whistle.

Q. But it appeared to you she slowed down?

A. It appeared to me so, just where she slowed down, or just how long we had progressed I could not say exactly until we got in close to the dock, and then it became a very interesting problem.

Q. You do not know anything about, as you say, any signals given between the pilot house and the engine room?

A. I did not hear the signals. I could hear the screw sometimes.

Q. You say that after running two or three minutes at this speed of eight and a half statute miles an hour she slowed down more.

A. Yes sir.

Q. And about how long did she run under this still slower bell?

A. Well, not very long. The speed of the boat from here on in was slower.

Q. It was all the time slower than the eight and a half miles an hour?

A. I think so.

Q. That was your notion?

A. Yes.

Q. Would you say then, at no time from the time she ran into the fog bank the other side or westerly of the bell

buoy, did she run faster than eight and a half statute miles an hour?

A. Yes.

Q. That is your opinion?

A. That is my belief.

Q. Now what is the next thing after that, that you noticed as to her speed, the speed of the Indianapolis, after this still slower speed?

A. Well, we proceeded on in and the first I knew—

Q. Still under slower speed all the time?

A. No, the slow speed, what I would call the slow speed we proceeded on in, and there was a boat leaving, apparently coming out from the water front and proceeding toward West Seattle, blowing at frequent intervals and we answered that boat.

Q. Which side of you?

A. To the starboard of the Indianapolis.

Q. You did not know what boat that was?

A. No. But it blew a number of whistles, and we went ahead carefully until we knew we were clear of it, that is I felt we were clear of it, and then there was a boat coming down the other way.

Q. A boat coming up on your port side?

A. Yes, and she was blowing at frequent intervals, and the Indian was doing the same.

Q. You could hear both of those boats very distinctly?

A. Well, I heard them. The house was between me and the other boat. It seemed to be further away from us and I did not pay so much attention.

Q. Did that pass the Indianapolis?

A. I do not think it did—I think it did right down close to the harbor, but I do not think it did until some time. They seemed to be converging, from the sound of the whistles these two boats were converging to a common point, apparently both were working for the same dock. Then there were whistles immediately in front and a little to the port and in front.

Q. How many different whistles did you hear there?

A. I could not say how many different, but I heard a

number of them. And these whistles passed down in front of the Indian until they got by.

Q. And they were different kinds of whistles?

A. No, these whistles seemed to be the whistles of the same vessel. Seemed to be a vessel proceeding from a northerly to a southerly direction.

Q. How long did you hear them, when did you first hear that whistle?

A. Oh, we got pretty well in toward the harbor.

Q. How long did you hear it?

A. Well, I heard that whistle for, I should say, three or four minutes. No, that is a good while—two and a half minutes.

Q. About two and a half minutes from the time you heard it until—well, during that whole period you heard that whistle?

A. Well, that whistle became very interesting before we got through.

Q. From the time you first heard that whistle until the last time you heard it, how long was the period?

A. Two and a half to three minutes is my guess.

Q. You mean then that that was the whistle that afterwards proved to be the Kitsap?

A. I think so.

Q. In your opinion, from the time you first heard it practically dead ahead until the collision, was from two and a half to three minutes?

A. No, I think I heard her before she was dead ahead, I think I heard her well to port.

Q. Well to port, how far to port?

A. Two or three points.

Q. And about how long before the collision?

A. I should say three minutes, two and a half to three minutes.

Q. Then when did you hear it after that?

A. It seemed to be proceeding southerly across the bow, across the bow of the Indian, until it got across her bow.

Q. And how far across?

A. I should think about two points across the bow.

Then it appeared to stop and blowed frequently and drew rapidly nearer.

Q. Then drew rapidly nearer? Did it remain in the same comparative position until it got to this two point place off the starboard bow?

A. It seemed to be in pretty nearly the same general direction and then the collision came so quick that she did not have much time to—

Q. After you got to this point where you say it seemed to stop, there was a short period from there until the collision?

A. What I mean to say is this: The Indian was headed in on one course, and these whistles went down until they got by the course the Indian was going—

Q. About two points off the starboard bow?

A. I think about two points off the starboard bow, and in front aways, and then there seemed to come two or three blasts of the whistle from practically the same position, indicating to my mind that the vessel had ceased its progress in a southerly direction. Then I noticed that the whistles appeared to be drawing dangerously closer, and they blew two or three signals from each boat.

Q. Now tell about how many signals you heard from the Kitsap altogether?

A. Why, I could not tell exactly. I should say about, possibly six signals before I heard the three, before I heard the three signals.

Q. And about what intervals were there between them?

A. Well, they varied. At first while proceeding in a southerly direction they were not so close together. But they got to coming pretty fast comparatively, both vessels were blowing at very frequent intervals.

Q. Would you say 15 seconds?

A. Some of them were quicker than that.

Q. And you would not say any of them were longer than that would you?

A. Well, the first ones were.

Q. How much longer, half a minute?

A. No, hardly half a minute.

Q. Hardly half a minute. Then in your opinion all the whistles you heard from the Kitsap were less than a half a minute apart?

A. Some of the first ones were that she blew when she was going down, apparently.

Q. How far were they apart?

A. Oh, I could not tell exactly.

Q. Were they three quarters?

A. I hardly think they were three quarters of a minute.

Q. But the later signals were about 15 seconds apart?

A. Well, I could not tell exactly as to that. They were what you would call very frequent whistles.

Q. You could not have heard more than two or three from the time she seemed to stop her southerly course until the collision?

A. I think I heard three from the time that she stopped or apparently had ceased to make the southerly progress until the danger whistle, the three short blasts that were blown from each vessel.

Q. How long before the vessels collided did you hear the three short toots?

A. It was very quick before the collision. The collision was the next thing on tap.

Q. That was the next thing. So that after the southerly progress of this other vessel until the actual collision, would be the time that would take both these three fog whistles at these short intervals, then the three toots and then the collision was almost on top of the three toots?

A. The collision was not on top of the three toots, but the vessels came within view of each other almost immediately after the three whistles were blown.

Q. And how long was the collision after they came in view of each other?

A. That was pretty quick. Just how long I could not say.

Q. In your opinion at the time the Kitsap came in sight the Indianapolis was making some forward progress?

A. I think she was.

Q. And you did not hear and of course you do not know

anything about what signals were given to the engine room after that?

A. Only by the action of the vessel.

Q. And it is your opinion that at the time of the actual collision that the Indianapolis was still making some forward progress?

A. I think she was making some forward progress, very little, however.

Q. You still remained in this same place all the time?

A. I remained right there.

Q. You saw the Kitsap headed—how was she headed when you first saw her, with reference to the Indianapolis?

A. Well, the Kitsap was headed toward the Indianapolis in a course that left in my mind doubt as to whether she was going to clear, going to strike the bow of the Indianapolis with her bow or whether her bow would clear the Indianapolis, and she would be struck on the side.

Q. Then could you tell what the angle was of the two vessels when you first saw them?

A. Why, I do not think it was quite as much as 45° , but not far from it, not far from 45° angle. That is the Kitsap was coming at about a 45° angle to the Indian's course.

Q. Now will you indicate on this sheet of paper about the angle the two vessels were to each other at the time you first saw the Kitsap?

A. At the time I first saw the Kitsap. (Witness does so).

Q. Mark one of these K and the other I, indicating the Kitsap and the Indianapolis respectively. You have marked here the smaller boat to indicate the Kitsap with a K have you and the other one Ind to represent the Indianapolis?

A. Yes sir.

Q. Now the vessels were in that relative position, Mr. Jacobs, the Kitsap, coming forward and the Indianapolis making a little motion, the Kitsap would strike the Indianapolis?

A. That is what I thought she was going to do.

Q. You saw the collision yourself, didn't you?

A. Yes sir.

Q. And the Indianapolis struck the side of the Kitsap about her pilot house, didn't she?

A. Yes, that is the point of impact.

Q. So, as a fact, the Kitsap must have been further away from the bow of the Indianapolis than you have indicated on this drawing?

A. It might possibly a little, it appeared to me that the Kitsap struck the Indian with her side rather than with her nose. That was the appearance I got out of it.

Q. That the Kitsap struck the Indian with her side. What you mean is that the two vessels came together—Take these two models which I hand you, and which are made on a scale of one eighth of an inch to the foot, the larger model representing the Indianapolis and the smaller model the Kitsap. Will you place these models on the paper at the relative positions which the two vessels appeared to you at the time you first saw the Kitsap?

MR. BRONSON: That cannot be done on a sheet of paper this size. There is not room enough to put them on. I object to their use because you cannot make a true illustration, you have not distance enough on the paper to represent the comparative distance on the water and the vessels themselves.

A. The idea I had at the time was that the Kitsap was about the length of the Indianapolis from the Indianapolis.

Q. You have now laid these two models upon this paper at the relative positions and angles to which the two vessels appeared to you at the time you saw the Kitsap first?

A. Yes, as near as I can do it.

Q. Draw a line around so much of the models as you can on the paper. (Witness does so). Now mark the line which represents the Kitsap with a K. (Witness does so). And a line which represents the Indianapolis with an I. (Witness does so). And the distance apart that you have marked on this paper is, in your opinion, the approximate distance apart of the two vessels, comparative distance apart of the two vessels, when you first saw the Kitsap?

A. What I had aimed to do is to get the bow of the Kitsap on the drawing a distance from the Indianapolis

close to the length of the Indianapolis, for at the time, my judgment was that the Kitsap was in sight when she was just about the length of the ship away from us. I should say in the vicinity of 200 feet.

Q. You saw the cut that was made in the Kitsap afterwards?

A. I saw there was a rent in the side of the Kitsap.

Q. And it was a cut that went in some seven or eight feet?

A. I could not tell just how far it went in.

Q. A considerable distance?

A. It went in quite a little.

Q. When you say that you thought that the Kitsap struck her side against the Indianapolis—

A. Her bow.

Q. Instead of her bow—

A. Instead of her extreme bow.

Q. In other words, the Indianapolis struck the side of the Kitsap instead of striking her bow, her extreme bow?

A. She did not strike the extreme bow. She struck the starboard side of the Kitsap, forward of the—

Q. Port side you mean, don't you?

A. Yes, port side of the Kitsap, forward I think, just forward of the pilot house, if I remember rightly, not far from it, I think just forward of it.

Q. Struck substantially at the same angle you have indicated on this drawing?

A. Yes.

Q. The same angle they were in when you first saw them?

A. I think substantially that angle.

MR. MERRITT: We offer this diagram made by the witness in evidence as part of his cross examination.

Paper marked libellant's exhibit "I," filed and returned herewith.

Q. Of course the collision was very quick after you saw the Kitsap?

A. Yes.

Q. And your impressions as to how fast she was mov-

ing and what rate she came, was in a very short space of time?

A. I gathered them on the spot at the time.

Q. The weather was very foggy when you came in, was it not?

A. It was thick.

Q. You have been sailing around on Puget Sound considerably?

A. For the last twenty years, more or less.

Q. And it was one of the thickest fogs that you very often see on the sound?

A. One of the thickest. I have seen thicker, but I only recollect one or two that I have seen.

Q. Just about a solid bank in the harbor here from the time you came around the buoy until you got in?

A. It seemed to be thicker as we approached the docks.

Q. All the time it was very thick and kept getting thicker as you got closer to the docks where the smoke was?

A. That was the opinion I had at the time.

Q. About how long a time was it from the time you came out on deck until the collision occurred?

A. I could not say. They were fooling around out there so much and slowed down and stopped, and going ahead working in I could not give the time.

Q. Could you tell approximately?

A. No, I could not.

Q. Are you familiar with the ordinary running time of the Indianapolis?

A. Measurably.

Q. Well, how long is it, with reference to the ordinary time making the same trip in fair weather?

A. Oh we would have been at the dock and landed before the collision, had it been fair weather.

Q. In your opinion?

A. In my opinion.

Q. Would you say it was long as twenty minutes?

A. From the bell buoy?

Q. Yes?

A. To the time of the collision? No, I hardly think so.

Q. As long as ten?

A. Yes, more than that.

Q. More than ten?

A. More than ten.

Q. You would be pretty certain about that, although you did not look at a clock or a watch?

A. No, I did not look at anything except to try to look at the boats.

Q. You say it was as much as ten minutes. Could it have been as much as 15 minutes from the bell buoy to the collision?

A. My impression is it might have but I would not say as to the time that elapsed.

Q. You would not say it was more than that?

A. From the bell buoy to the point of collision it must be in the vicinity of two knots, two and a half possibly. It might have been fifteen minutes; it might have been more than that, it might have been 18.

Q. Of course as to time this is all a guess.

A. It is largely a guess.

(Testimony of witness closed).

J. R. TUCKER, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). Mr. Tucker, were you on the Colman dock on the 14th of December last, on the day the Indianapolis and the Kitsap were in collision?

A. Yes sir.

Q. What were you doing out there?

A. I was watching for the arrival of the steamers Indianapolis, Telegraph and Kulshan.

Q. What was the state of the weather?

A. It was foggy.

Q. Was it a steady fog or solid fog?

A. No, it was not. It was in banks more or less. It would be very thick for an instant, then a wave would come and it would thin it for—not necessary thin it but make it so that you could see probably 250 or 200 feet.

Q. Was the Indianapolis due or over due?

A. At what time do you mean? When I was standing

there, I was standing there for about 25 minutes. I do not know what you refer to.

Q. Did you see the steamer Kitsap?

A. Yes sir.

Q. When you saw the Kitsap was the Indianapolis due, or do you remember?

A. I do not remember the exact time, but it was about—the Indianapolis was due in fact.

Q. Which way was the Kitsap headed when you saw her?

A. The Kitsap was headed south.

Q. I mean compared with the water front generally?

A. With the face of the dock it was not quite a right angle. It was a little more than a right angle.

Q. The way she was headed?

A. Yes sir.

Q. She was headed into the bay more than a right angle?

A. Yes sir.

Q. Not a great deal more?

A. No, not a great deal more.

Q. I will ask you to examine Claimant's exhibit 9 and state how nearly you think the dotted mark "course of Kitsap" approximates, right off the Colman dock, to the course she was making. How near that line do you think she was making, right off the Colman dock?

A. Well, that would be a little bit more than a right angle, as I expressed myself. It is practically as this diagram was drawn. Her course would be practically as this diagram was drawn. She was swinging at the time she passed the dock, you could see she was swinging. Her course was not at a right angle.

Q. And where had you first seen her?

A. My first attention was drawn to her through the discussion which arose when she whistled from the dock. Just who this discussion was with I do not know. It was one of the men standing with me, and one said that is the Hyak—

MR. MERRITT: I object to what was said.

Q. You need not state what was said except to state that it was called to your attention, that is all.

A. As a matter of fact I heard her blow from pier 4, from the dock. I remarked that was the Kitsap—

Q. Then it was a discussion as to whether it was or not?

A. The discussion arose as to whether or not it was the Kitsap, yes.

Q. And where did you first see her, as near as you can tell?

A. As she passed off the face of the Grand Trunk dock, and made this swing. I saw her practically from the time she passed past the Grand Trunk dock until she got—well until she was about, I would say, 100 feet past the Colman dock on the swing.

Q. That is 100 feet beyond the Colman dock?

A. 100 feet south of the Colman on her swing.

Q. About how far was she from the face of the Colman dock when she passed it?

A. I would naturally just estimate it would be about 125 or 150 feet.

Q. Now what speed was she going?

A. I could not say positively what speed she was making.

Q. Was she going slowly or rapidly?

A. She was going fast, very fast for the weather. Well, approximately about 12 miles an hour, nearly.

Q. Did you make any remark to the people standing alongside as to her speed?

MR. MERRITT: I object as irrelevant and immaterial.

A. Yes sir.

Q. Did you note her speed?

A. Yes sir.

Q. And was attention called to it?

A. Yes sir.

Q. Would the course that she was steering take her across the course of the Indianapolis from Duwamish Head to the Colman dock?

A. Yes sir.

Q. If she proceeded out to Paulsbo down Sound, across the Sound, would it necessitate her crossing that course again?

A. Yes sir.

Q. Did the steamer Telegraph arrive at the time she left?

A. Not at the dock, no sir.

Q. Had she come into the bay?

A. She was into the bay, but not at the dock.

Q. What was done with the Telegraph?

A. As soon as the Telegraph got in hailing distance she was ordered back—to as near as she could get to the distress signals, to see what the matter was.

Q. You had heard distress signals?

A. Yes, I had heard distress signals at the time that the Telegraph hove into sight, in hailing distance.

CROSS EXAMINATION:

Q. (Mr. Merritt). You say that you were standing with Mr. Burns and Captain Brydeson at this time?

A. Yes sir.

Q. And you heard the Kitsap when she backed away from pier 4?

A. Yes sir.

Q. How many whistles did you hear from her after that?

A. I could not say definitely. I did not count them. I would imagine five or six whistles altogether.

Q. What intervals?

A. Well, approximately something less than a minute.

Q. How long after you heard her whistle backing from the dock, did you hear these distress signals?

A. Well, I do not know. I did not keep track of her time.

Q. Cannot you tell about how long?

A. It was about two or three minutes, two minutes and a half, something like that.

Q. In your opinion it could not be more than three

minutes from the time you heard the whistle backing away from the dock, pier 4, until you heard the distress signals?

A. It was more than three minutes from the time I heard her leaving the dock.

Q. That is what I want to know, about how long it was?

A. You can say four minutes and a half or—

Q. It could not have been more than five, then?

A. No, I do not think so.

Q. In your opinion it was about four minutes and a half from the time you heard it?

A. Probably not that long.

Q. Now where did you hear these different whistles from the Kitsap?

A. I heard her leaving whistle from the dock, and a number of fog whistles. Just where it was—it was on her course.

Q. Before she came in sight.

A. Before she came in sight.

Q. And afterwards did you hear any?

A. After she came into sight?

Q. How long did you hear her after she came in sight?

A. I do not know definitely. I could not say definitely but I should imagine about three or four whistles when she first left the dock she did not blow as often as when she passed the Colman dock.

Q. After she passed the Colman dock then you heard three or four whistles?

A. Yer sir.

Q. These were about 15 seconds apart.

A. Well, they were close together. I do not know just.

Q. What is your opinion about that?

A. I should imagine that is about it.

Q. Then you heard distress signals. Now, when she was passing the Colman dock, you thought she was about 125 feet off?

A. Something like that.

Q. When you say she was at right angles to the face of the dock you do not mean broadside was to you?

A. The broadside was to us, with her stern in; she

was not at right angles. Her stern was in toward the dock, she was making a swing.

Q. Now did you watch her until she went out of sight in the fog?

A. I did.

Q. Did she maintain substantially the same position?

A. She was still swinging, as far as I could see.

Q. How far did she go south of the Colman dock?

A. Well, I do not know exactly.

Q. How far could you see her on her way south of the Colman dock?

A. Well, her course south of the Colman dock was about 100 feet as she swung.

Q. Well, did you see her?

A. The last I saw of her south of the Colman dock was about 100 feet.

Q. She was still swinging?

A. Yes sir.

Q. She had not got turned around at that time?

A. No sir.

Q. When she had got turned square with the dock?

A. She was not square with the dock.

Q. Did you see the name of the vessel?

A. No sir.

Q. How much of the vessel could you see?

A. I could see her windows and dim outline.

Q. Just dim outline?

A. Yes, just enough to know which vessel it was.

Q. Did you see the Reliance that day?

A. No, I did not notice her.

Q. Did you hear her whistle?

A. Not that I know of.

Q. Do you know her whistle?

A. Yes, I know her whistle.

Q. But you did not see her?

A. I did not see her that I remember.

Q. Now you say this was foggy, quite foggy, and once in a while it would lighten up just a little?

A. It was thick fog with light waves, that is what it was.

Q. You do not mean that the fog was less dense but that it was a little lighter?

A. It was less dense because of the breeze I imagine.

Q. Was there any breeze?

A. There was a very faint breeze but often times just enough to make the fog wave.

Q. In your opinion she was going at least 12 miles an hour on this swing?

A. Yes, she was not making a sharp swing.

Q. What do you base your opinion on?

A. That is my estimation.

Q. Just a guess. You are not a seafaring man?

A. Well, I have had charge of the operating department for some length of time.

Q. Charge of the operating department, you mean the office work?

A. No, dispatching vessels out and in.

Q. You have not actually run in any capacity on vessels, have you?

A. Just as purser occasionally, as a relief.

Q. This 12 miles an hour is just a guess of yours?

A. Yes, it is a guess from my knowledge of the speed of the different boats.

Q. Now you say the Indianapolis was due at this time?

A. Yes, just about.

Q. The Kennedy was still there?

A. Yes sir.

Q. And the Telegraph came in just afterwards?

A. The Telegraph came in just about the time the distress signals, just a second after the distress signals blew in.

Q. Could you say about how long after you saw this boat go by?

A. I could not say how long.

Q. Did you look at the clock at any time?

A. No sir—I did look at the clock but I do not remember any time that I looked at the clock. I was watching for the arrival of the different steamers and noting them.

Q. You are sure it was after time for the Indianapolis to be in?

A. Yes sir.

Q. What was the Kennedy's leaving time at that time?

A. 4:30 I believe.

Q. You believe—do you know?

A. 4:30.

Q. You are sure about that?

A. Yes, she was leaving late that day.

Q. That was her regular time?

A. Yes sir.

Q. They changed the leaving time that day?

A. No, her leaving time was to be—I may be wrong on that now, I do not know whether it was 4:30 or 4:40.

Q. Her time for a long time during the fall was :40?

A. It was :40, yes.

Q. It was changed that day?

A. She was late leaving that day.

Q. You could not say whether or not at that time they had changed her leaving time, could you?

A. No. There was to be a change to go into effect December 15th to 4:35. Whether or not it was from 4:20 to 4:35 or 4:35 to 4:40—4:40 to 4:35.

Q. Don't you know it was 4:40 to 4:35 to get out ahead of the Indianapolis coming in?

A. That was what it was going into effect for.

Q. So that it would be changed from 4:40 to less than that?

A. Yes, but prior to that time she was leaving at 4:30—I do not remember, I have been out of the employ for some length of time.

Q. But before the change you speak of was ordered for December 15th, she had been leaving the same time the Indianapolis was due, that is 4:30?

A. Yes.

Q. They changed it from 4:30 to 4:35?

A. Yes.

Q. This change was to go into effect on the 15th?

A. Yes sir.

Q. And this day she was late, she was past time to go out that day?

A. A trifle late, yes.

REDIRECT EXAMINATION:

Q. (Mr. Bronson). You are not employed by the steamboat companies on the dock now?

A. No sir.

Q. And have not been for some time?

A. No sir.

Q. You are running a ranch, are you?

A. No, I am in the merchandising business at the present time.

Q. Is the Kitsap anything like the Reliance?

A. Her lines are similar.

Q. Was it possible for you to confuse the Reliance and the Kitsap on this occasion?

A. No sir, not by their whistles, I could not confuse them. In fact I never have confused them.

Q. Well, do you know positively that the vessel that you saw going by the dock you have testified to, was the Kitsap?

MR. MERRITT: I object as calling for a conclusion.

A. No question about it.

Q. With reference to the angle at which the Kitsap was passing the dock, did I understand you to say that it was less or more than a right angle? Or, to put it in another way, as she came abreast of the dock was her bow or her stern nearest to the dock?

A. Her stern.

Q. When she was swinging away from the dock?

A. When she was swinging away from the dock.

(Testimony of witness closed).

J. E. GLEASON, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). Were you on the end of the Colman dock Mr. Gleason, on the 14th of December last, on the day in which the Indianapolis and Kitsap were in collision?

A. Yes sir.

Q. Did you see the Kitsap pass the dock just before the collision?

A. Yes sir.

Q. You know the Kitsap, do you?

A. Yes sir.

Q. Do you know the steamer Reliance?

A. Yes sir.

Q. Was there any chance of your confusing the steamer Reliance and the Kitsap?

A. No sir.

Q. Do you know the whistle of the Kitsap?

A. Yes sir.

Q. What was the condition of the weather?

A. Thick.

Q. Which way was the Kitsap headed when you saw her, that is generally, with reference to the dock?

A. Well, she was—

Q. Going north or south?

A. She was swinging, she was coming down south, swinging to the starboard.

Q. Swinging out toward the bay?

A. Yes sir.

Q. About how far was she off the dock?

A. I should judge about 100 feet or more.

Q. And you saw her distinctly?

A. Well, quite distinctly. The fog would rise a few minutes and then it would thicken again.

Q. Did you hear her whistle?

A. Yes sir.

Q. How was she traveling, fast or slow?

A. Fast.

Q. Any remarks made about the way she was traveling?

A. Yes sir.

Q. You need not state what was said.

A. Mr. Tucker made remarks about her speed.

Q. Could you estimate the speed, are you familiar enough with the speed of boats, to give an approximation about what the speed was that she was making?

A. Oh about ten or twelve miles an hour.

Q. Had the Telegraph arrived when she went by?

A. No sir.

Q. Did she arrive soon after?

A. Yes sir, just how soon I could not say.

CROSS EXAMINATION:

Q. (Mr. Merritt). What is your business?

A. I call the boats on the dock.

Q. You are in the employ of the Claimant company here?

A. Yes sir.

Q. How long have you been in their employ?

A. About six years.

Q. This was very foggy weather at this time?

A. Yes, thick for a while, then lift a little bit.

Q. Do you know what time it way?

A. Why it was along about 4:35, somewhere along there.

Q. It might have been 4:40 or 4:42 or 4:43?

A. When the Kitsap went by?

Q. Yes?

A. About that time.

Q. She was headed very close to right angle to the corner of the dock where you stood?

A. Yes sir.

Q. Were you out with Tucker and the others?

A. Yes, Tucker and Captain Brydeson and Mr. Burns any myself at that time, and some other man there, who it was I do not know.

Q. She was going, in your opinion, ten or twelve miles an hour?

A. Yes sir.

Q. When did you first see her?

A. I saw her as she came by the end of the Grand Trunk dock.

Q. How long could you see her?

A. Oh, I guess for a minute.

Q. About a minute?

A. May be a minute and a half or a minute and a quarter.

Q. Was it a minute or a minute and a half?

A. I could not say exactly how long it was.

Q. Where was she when you last saw her?

A. Why, she seemed to me to be about 100 feet from the dock, south of our dock and off pier 2.

Q. Still had pretty near this same angle?

A. Yes sir.

Q. Did not change the angle very much?

A. She was swinging.

Q. She had not got swung around?

A. No.

Q. Had not got swung so that she was starting off from the dock?

A. No sir.

Q. Any where north, had she?

A. I could not say. The last I seen of her she had not.

Q. And when you saw her this 100 feet south of the Colman dock she had not got swung anywhere near around straight off?

A. Yes, of course she swung a great deal more than when I first saw her.

Q. Now you say you heard her whistles?

A. Yes.

Q. Did you hear distress whistles testified to?

A. I heard the Indianapolis' distress whistle.

Q. Three whistles?

A. Yes.

Q. How long was that after you could see the Kitsap?

A. I could not say, because I was listening for the Telegraph at the time and the Kulshan. The Telegraph was coming in and the Kennedy waiting in there for the Telegraph, waiting until the Telegraph got in, I had walked back to the waiting room.

Q. You had walked to the waiting room?

A. Into the doorway.

Q. When you heard the three distress whistles you were in the waiting room?

A. No, I was standing in the door of the waiting room.

Q. Could you approximate the time, how long it was after you saw what you thought was the Kitsap go out of sight, before you heard the three whistles?

A. No, I could not.

Q. Would it be as much as five minutes?

A. Oh, I think it would be hardly that. It was not that.

Q. It might have been four?

A. It might have been four.

Q. Would it be your opinion that it was four?

A. I would not say that.

Q. Was it as much as three?

A. I do not know really how much time there was, because we were listening for the Kulshan and the Telegraph and these boats.

Q. What was it a minute?

A. Oh, it was a minute.

Q. Was it two minutes?

A. I could not say that.

Q. You could not say whether it was two, three, four or five minutes, or how long?

A. No sir.

Q. How many whistles did you hear from the Kitsap?

A. She was blowing fog whistles as she came down the front and as she went by the dock she blew a whistle.

Q. You did not see any name, did you?

A. No sir. I know it was the Kitsap.

A. I did not ask you that. You did not see any name on the boat, did you?

A. No sir.

Q. All you could see was the outline of a boat with lights from her windows and cabins?

A. No sir, I saw more than the outline.

Q. What part of the boat?

A. I saw her upper house, saw her stack with the white collar around it.

Q. And what else could you see?

A. Well, I could see the broadside of the boat.

Q. Could you see her clear and distinct?

A. Quite clear.

Q. Very clear?

A. Not very clear.

Q. Now there are several other boats on the Sound that have a stack with a white collar on?

A. Yes, but they are not the model of the Kitsap.

Q. Did you look for the name?

A. No sir.

Q. The Kitsap had a large name just above her pilot-house didn't she?

A. I do not know whether the Kitsap's name is on the pilot house top or not.

Q. She had it on the pilot house, whether on top or alongside, didn't she?

A. I do not think she has got one on the side of the wheel house.

Q. Did she not have one there, either on top or on the side of the pilot house?

A. I did not notice it.

Q. In fact you could not see any name at all?

A. I could not see any name.

Q. Could not see the name on any of the boats?

A. No sir.

Q. Could you see the Grand Trunk dock?

A. At that time, yes sir.

Q. You looked over to see that?

A. Well, I seen her when she came from that direction and also seen the Grand Trunk dock.

Q. You could see that very clear?

A. Well, quite clear.

Q. Could you see beyond the Grand Trunk dock?

A. No sir.

Q. Did not see any other boat go by?

A. No sir, not that day at that time.

Q. (Mr. Bronson). There is nothing to see beyond the Grand Trunk dock for a few miles except water?

A. That is all.

Q. You naturally could not see anything beyond it?

A. No sir, no other docks are visible until you get to pier 14.

Q. You do not know how much further you might actually be able to see?

A. I could not see any further.

Q. Because there is nothing there to see?

A. Nothing there to see.

Q. (Mr. Merritt). The Kitsap had been there the minute before?

A. Yes sir.

Q. And you did not see her the other side of the Grand Trunk dock, did you?

A. No sir.

Q. You could not see her the other side of the Grand Trunk dock?

A. No sir, not in foggy weather.

Q. So that you could not have seen anything beyond the Grand Trunk dock at that time, could you, if there had been anything there to see?

A. Well, I could not say as to that.

Q. Well, you cannot say as to that because you know when you first saw the boat coming out of the fog?

A. Coming out of the fog by the Grand Trunk dock.

Q. You know from that how far you could see to the northward of the Grand Trunk dock, don't you?

A. If there was a boat there you might see a little further.

Q. There was a boat there?

A. She came out of the fog.

Q. There was a boat?

A. Yes.

Q. And you know how far you could see?

A. Yes.

Q. You know you could not see beyond the Grand Trunk dock?

A. No sir, nothing to see beyond the Grand Trunk dock.

Q. (Mr. Bronson). You could not measure where she was when she came out of the fog?

A. No sir.

Q. You know she backed out of the dock before that?

A. Yes, I heard her give her leaving whistle.

Q. And then she was blowing when she started ahead?

A. Yes sir.

Q. And you saw her come out of the fog?

A. Yes sir.

Q. Swinging to starboard?

A. Yes sir.

Q. Did she seem to be increasing her speed or slowing?

A. She seemed to increase. She was running fast, faster than boats ordinarily run down in that kind of weather.

Q. (Mr. Merritt). Speeding up all the time, was she?

A. Yes sir.

Q. Appeared to be to you?

A. Yes.

Q. You did not hear any bells?

A. No sir.

Q. Do not know anything about what turns she was making?

A. No sir.

Q. Whereabouts on Claimant's exhibit 9, with reference to the Grand Trunk dock, did you first see her?

A. About here.

Q. On the southerly side?

A. Yes sir.

Q. You were watching for her as she came down, were you?

A. I was watching for the Telegraph and the Kulshan.

Q. You were looking down in that direction.

A. I was right here on the end of the dock here.

Q. You were right on the northwestern corner of this point of the Colman dock?

A. Yes sir.

Q. You were looking down past the end of the Grand Trunk dock?

A. Yes sir.

Q. And the first you saw of the Kitsap was as she was coming by the southwestern corner of the Grand Trunk dock?

A. Yes sir.

Q. That is where the line marked 15 crosses the dotted line marked "couse of Kitsap December 14." That is about the point you first saw her?

A. It might have been a little more in here.

Q. Mark it with a cross in there?

A. Just about here.

Q. Just mark that with a small k. (Witness does so). The point you have marked off the southwesterly corner of the Grand Trunk dock on Claimant's exhibit 9, is the point where you first saw the Kitsap?

A. Yes sir.

Q. And she had her lights burning?

A. I did not notice any lights.

Q. Did not you notice any lights anywhere?

A. No sir.

Q. Do not know whether she had any lights burning in her cabin or not?

A. No sir.

Q. But you saw her at that point first?

A. Yes sir.

Q. You were looking down in that direction?

A. Yes sir.

Q. I do not understand that you are attempting to give any accurate estimate of time on this?

A. No sir.

Q. Just guessing at that?

A. Just guessing at the time, sir.

(Testimony of witness closed).

Hearing adjourned to be resumed by agreement.

Seattle, Washington, July 8, 1911.

Continuation of proceedings.

PRESENT: Mr. Merritt, for the libelant.

Mr. Bronson, for the Claimant.

W. L. GAZZAM, recalled, testified on behalf of the Claimant as follows:

Q. (Mr. Bronson). There is one date I want to get from you: Do you remember the time when the Kitsap

was sunk—I do not mean to fix that particular date, but you remember after she was sunk they dragged to locate her?

A. Yes sir.

Q. I think you testified to that. Now, do you know about when they located her?

A. I cannot say, Mr. Bronson, without refreshing my memory on that. I could, I think, refresh my memory from the salvors and get these dates, but I cannot state positively as to the dates.

Q. Well, do you remember—

A. I know the date she was sunk, because that has been pretty firmly fixed in my mind by the testimony I have heard since, and by the evidence we put in.

Q. What was the proceeding after she was located? What was the next thing that was done?

A. She was towed in a northeasterly direction from the bottom, so to speak. In other words, she was salvaged by being connected by cable with a dry dock and then with the action of the tide and the sinking of the dry dock, she was lifted from the bottom so to speak, and towed to another bottom, and when she touched the other bottom, why then they went through the same proceedings again with the tide, sometimes with sinking the dock, and it was towed in a northeasterly direction toward the Virginia street pier.

Q. What I am getting at, when they first located her and got her supported by the dry dock, they moved her a certain distance northeasterly?

A. Yes sir.

Q. What was it happened then, did they suspend operation or something or other, for a week or ten days?

A. They struck a snag. I say a snag, I do not mean literally a snag, but they struck an obstruction of sand and mud. At least that is the statement made by the salvors to me. I do not know that of my own knowledge, that they had a wall to raise it over, that they had to wait for certain tides as well as the sinking of the dock and it took them quite a considerable length of time to get her over that wall.

Q. That is what I was getting at. Do you remember

about what period of time that lasted, a week or ten days, something like that?

A. It was a considerable number of days, because Captain Gibbs and myself and others interested were out there constantly, every day, and as I recollect it it took quite a length of time.

Q. How far had they moved her from where she was first located, until they came up against this wall of sand?

A. Well, it was from off in the neighborhood of the Grand Trunk dock, Grand Trunk pier, so to speak, and I should say for the Virginia street dock. Now the distance you would have to calculate that.

Q. I am not speaking of the distance between this sand bank and the Virginia street dock, but I speak of the distance she was located before she came to this sand bank?

A. She moved very readily for a day or two, then she struck what they told me, and what I have every reason to believe to be true, a wall of mud.

Q. What I am getting at, how far do you imagine she was moved for the day or two before she struck that wall?

A. Oh, a number of feet, sir. I could not say but I should say several blocks.

Q. She practically was hung up for quite a while?

A. For several days.

MR. BRONSON: That is what I wanted to get at. I will excuse Mr. Gazzam for the present.

J. S. ROBINSON, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). Where were you officing during the last six months, we will say?

A. 614 Colman building.

Q. Did you have occasion to note, at any time, the location of the floating dry dock that was raising the Kitsap?

A. I did.

Q. Do you remember her being located in one particular spot for sometime, as Mr. Gazzam has just testified to?

A. I do.

Q. Looking out from your window what relative position did you stand in to the Grand Trunk and Colman docks?

A. Well, looking out from the second window of our office, I looked right along the south line of the Grand Trunk dock.

Q. Well, could you look down practically parallel between the two docks?

A. Yes sir.

Q. Between the north line of the Colman and the south line of the Grand Trunk?

A. Yes, the southernmost window of our office.

Q. Now did you observe the dry dock, as she was hanging over the Kitsap, during this period of time, quite a considerable portion of time before they began to move northward?

A. I observed her out there. I presume she was hanging over the Kitsap. I saw them occasionally lowering and pumping her out.

Q. Now where was this dry dock relative to the position of the two docks?

A. Well, I should think it would be a trifle south of a line run in the middle between the two docks.

Q. Was there any obstruction to the view in looking out?

A. No, there was not.

Q. Did she move her position after quite a long period of time?

A. Oh, I should think about ten days she remained there.

Q. And then did she move northerly?

A. Yes, I came down one morning and looked out and could not see the dock. I finally located her behind the Grand Trunk dock. She had been moving then and was moved up.

CROSS EXAMINATION:

Q. (Mr. Merritt). Your office with Mr. Bronson?

A. Yes sir.

Q. You say looking through the most southerly window in your suite of offices, you look right down between the two docks?

A. Yes sir.

Q. You do not remember the dates when you saw the dry dock out there for this long period?

A. No, I could not fix the date.

Q. Do you remember the time when the Kitsap was sunk?

A. Yes sir.

Q. Could you tell about how long after that it was?

A. Oh I could not accurately. I should suppose that dock was out there along from the middle to the last of January, somewhere along there.

Q. This position that you say she was in this long time, was the first position you saw her in?

A. That was the first position I saw her in.

Q. I suppose you were interested in the operation of raising the Kitsap from day to day?

A. I was interested in it because I had heard the testimony before the Inspectors.

Q. And you watched from the first time the dry dock went out there to the time of the salving of the Kitsap?

A. Yes, I think probably I did.

REDIRECT EXAMINATION:

Q. (Mr. Bronson). Was your attention called to the location of this dock, with a view to locating her position at the time?

A. Because I heard the testimony before the Inspectors, and knew there was a dispute as to the probable location of that boat, because we had talked it over in the office.

Q. When they started to move her from the position you have described between the two docks, did they move her steadily right north, out of sight on the north?

A. Yes, at least moved her up quite a ways steadily. She came to the point where we could not see her any more, up towards pier 4 or 5, some place in there.

Q. Now if she was moving previous to that time when your attention was called to her between the two docks, where would she have been relative to the Colman dock?

MR. MERRITT: I object as incompetent, irrelevant

and immaterial, and no evidence upon which to base the question.

Q. That is if she had been moved northerly to the point to which you first testified, where would she have been relative to the Colman dock?

A. She would have to be off the end of the Colman dock.

Q. Would she not have to be behind it?

A. She would have been behind it. She would have had to be behind it to be out of our view.

Q. So that she could not have been seen?

A. Yes sir.

(Testimony of witness closed).

ROBERT W. REID, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). Was your attention called to the floating dry dock supporting the Kitsap, or reported to be supporting the Kitsap, out in the harbor?

A. It was.

Q. Do you remember seeing her located in any one position for quite a long time?

A. I do.

Q. Were you in such a position that you could look down between the Colman dock and the Grand Trunk dock?

A. I was.

Q. Where was the dock relative to the south line of the Grand Trunk dock, or between the two docks?

A. It was at a point about midway between the two docks.

Q. And do you know whether it rested in that position or remained in that position for some time?

A. She did.

Q. Could you give an estimate of the time that would be?

A. Oh, quite a number of days, a week.

Q. And then did you notice whether or not she was moved comparatively rapidly within a day or two, out of sight beyond the Grand Trunk dock and on north?

A. She was, yes.

Q. You heard Mr. Gazzam's testimony a minute ago here?

A. Yes sir.

CROSS EXAMINATION:

Q. (Mr. Merritt). You were also with Mr. Bronson at that time?

A. Yes sir.

Q. You were interested in knowing the steps that were taken to salve the Kitsap, I suppose, from the first?

A. I was.

Q. The windows of your office look out over the Sound, where you could see what was going on there, and from a point somewhat south of the Colman dock up north and west?

A. Yes sir.

Q. And you noticed when the dry dock first went out there?

A. Yes sir.

Q. You could see from your windows where the dry dock first went and where she first located the Kitsap?

A. Yes sir.

Q. And she remained there in that position for several days?

A. Yes sir.

Q. And then moved north?

A. Yes sir.

Q. Moved north out of sight where you could not see her?

A. Yes sir.

Q. And that is the position you are now referring to as being in line between the Grand Trunk dock and the Colman dock was the first position.

A. Yes sir.

REDIRECT EXAMINATION:

Q. (Mr. Bronson). Do you know, Mr. Reid, whether or not you saw the dock when she first went out, or whether your attention was called to it by me afterwards? In other words, do you know of your own knowledge where the dry

dock first took hold of the Kitsap? Do you know whether or not she may have taken hold of her further south or not?

A. She may have taken hold of her further south. My attention was called to the dock by yourself.

Q. You have not any knowledge or recollection of the time when the salvage proceedings took place, except as your attention was called to it by me?

A. No.

Q. (Mr. Merritt). You look out of the window frequently, day after day?

A. Yes sir.

Q. And that was the first you saw of the dry dock there?

A. No, it was not the first I saw of the dry dock.

Q. Well, where did you see the dry dock first, I mean with reference to the salving of the Kitsap.

A. Well, it was very likely the same position.

Q. Did you see the progress of the dry dock as it was moving regularly northeasterly?

A. I did.

Q. Could you see where she stayed for some little time, after she moved northerly, could you see that out of the windows?

A. I could.

Q. She did move northeasterly for some distance and then stopped there for some several days, didn't she?

A. No, to the best of my recollection her progress northeasterly was steady.

Q. Well, she reached a point afterwards where you could not see her?

A. Yes, she did.

Q. And you do not know what she did or how long she stayed in that spot after that?

A. No sir.

(Testimony of witness closed).

Hearing adjourned, to be resumed July 10, 1911, 10 a. m.

Seattle, July 10, 1911. Continuation of proceedings pursuant to adjournment.

PRESENT: Mr. Merritt, for the libelant.

Mr. Bronson, for the Claimant.

CAPT. S. M. PERCIVAL, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). What is your occupation or profession?

A. My occupation is right-of-way agent in the state of Washington.

Q. Have you had any experience at sea on steamboats?

A. Well, I have had some experience in the Sound.

Q. That is what I mean.

A. Yes.

Q. Just about how many years?

A. Nine years experience.

Q. In what capacities?

A. Mate, pilot and master.

Q. Vessels on Puget Sound?

A. Vessels on Puget Sound, tow boats and steamers.

Q. Were you a passenger on the Indianapolis last December when she was in collision with the Kitsap?

A. Yes sir.

Q. Where were you during the trip from Tacoma to Seattle?

A. Well, most of the time I was down below.

Q. What was the condition of the weather?

A. The weather was foggy leaving Tacoma out of the harbor it was foggy, as soon as we got outside it was fairly clear.

Q. And how did it continue?

A. Well, it continued clear, that is fairly clear, until we rounded Alki Point, and then it shut down foggy, very foggy.

Q. When did you come on deck?

A. Well, I was down below when they passed Alki Point, and shortly after that I noticed fog whistles, and I went on deck. I do not know just exactly where we were when I went on deck, I should judge up about Luna Park or somewhere near that point when I went up on deck.

Q. That is when you heard the fog whistles begin to blow?

A. Yes.

Q. Was that what caused you to go on deck?

A. Well, partly, yes, that is principally what caused me to go on deck at that time.

Q. Where did you go on deck?

A. Well, I went up on the starboard side, that was on the main passenger deck, I went forward on the starboard side clear up into the eyes of her.

Q. You do not mean on the upper passenger deck, but on the main passenger deck?

A. I mean on the main passenger deck, not the hurricane deck but the main passenger deck.

Q. Right up in the peak of the vessel?

A. Yes, right forward.

Q. Now, what was the handling of the Indianapolis, as far as you saw, from the time you went on deck, on or about as you say Luna Park?

A. Well, do you want me to relate in narrative just the story of the accident?

Q. Just exactly as you saw it.

A. Well, when I went on deck, I had noticed the vessel slowed down and got her fog whistle sounding, and I went away forward on the starboard side, and heard several fog whistles, and our boat stopped, stopped working her engines. And there was one fog whistle in particular I could hear advancing on us very rapidly, after a few moments, and I could tell from my position on the boat that this vessel, whatever vessel it was, was swinging around approaching us rapidly, and as these whistles sounded louder each time, there was a woman and two men that I noticed standing quite near to me, and I was afraid from the sound of these whistles—

MR. MERRITT: I object to what you were afraid of. Just state the facts.

A. Well, the facts were to me, that the whistles, this whistle was coming on us rapidly and so closely that I thought perhaps there might be—

MR. MERRITT: I object to what the witness thought.

A. They might foul.

Q. Go ahead.

A. And I said to these people, you better go back. Because I wanted all the room there myself, if anything did happen. I was not sure anything would happen or not. Within a few minutes after that I saw the glimmer of light in that fog, saw the fog light and in an instant after that I could distinguish a white vessel, which was swinging—

Q. Swinging which way?

A. She evidently to me her helm was hard aport, swinging in that direction to starboard.

Q. Swinging to starboard.

A. Yes sir.

Q. And approaching you on which bow?

MR. MERRITT: I object as leading.

Q. If she was swinging on a port helm, I thought she would swing to starboard—

MR. MERRITT: I object.

Q. I ask you on which bow she was approaching you?

A. She was approaching us on our starboard bow. I was up here in the nose of this boat, up as far as a man would get and stand comfortably and was peering into the bank of fog. I was afraid something would happen from the sound of these whistles. That was the reason I was doing that, and pretty soon I saw this glimmer and this light, about in here (showing) and the vessel was swinging.

Q. Locate the bow of the vessel.

A. When I saw the bow of that vessel she was coming just about like this, and she swung, you know she swung in this position.

Q. I will mark this "Ind." for Indianapolis, and K for the Kitsap, as you show them on this diagram. Now I will mark this space over here "2" and ask you to show how they were when they hit?

A. (Witness does so). When they came together her bow—we struck her on the port side just about abeam. I never saw her after she was picked up, but it looked to me as

if she was abeam or just a little forward of the pilot house. And she lay when we hit, she lay right in like that, as near as I could tell, and then she swung around.

Q. When you saw her first you say she was swinging on a port helm?

A. Yes, looked to me so, because we blew three whistles, I heard this man blow three whistles, then some one ran out of the pilot house on this boat and ran back about abreast of the smokestack, and then ran back into the pilot house just after we hit, ran back in the pilot house, and the passengers on this boat were somewhat excited.

Q. On what boat?

A. The Kitsap, that is they were running back and forth on there but I do not believe so many people on our boat knew that anything had happened, and when she struck she swung right around like that, and we backed away from her immediately, immediately when we struck, the captain was backing when we struck on our boat, on the Indian, and immediately we struck we backed away so that I lost her, and I yelled up the gangway, I says don't lose her captain, and he went ahead. I do not suppose he heard me because I think he had gone ahead before I yelled but he went ahead and he picked her up and we swung right in just like that, looked just about like that. I do not know whether the Kitsap had our line or we had their line, but there was a line made fast and we helped these passengers over the side. The first one I helped was a Jap boy, and he had a life preserver on. I had a time to get him over. I could not get him over because the life preserver was caught on the rail, so I just pulled him over on deck. That was the only excitement as far as our boat was concerned. Then we took these passengers over.

Q. Now in a third division here on this diagram, lay out the way the vessels lay together after the collision,

A. While we were transferring the passengers?

Q. Yes.

A. Well, they laid in about that shape. Her bow was a little forward of us, and we took them right over the stem of the Indian. And this vessel, the Kitsap, settled and they

put a plank over from her hurricane deck on to our guard, and the last of the passengers were taken over there. I think the last person we took over was one of the crew of this boat, who seemed to have fainted away and we laid him right down on deck.

Q. Do you know who it was?

A. I do not know of my own personal knowledge who it was, I heard.

Q. Never mind then.

A. But anyhow, just at that time, just as we got them over, this boat took a heavy list to starboard, and they hollered everybody ashore, everybody off. Of course they had plenty of time and they got off. Then she lay right down, the Kitsap laid right down on her starboard side, on her beam, and that threw her mast and stick and everything away from the Indian, and they let go of her, they thought she was going to sink and they let go of this line entirely, and the captain of the Indian backed the Indian, and she settled, rolled and settled, and we backed away so far that we lost a view of her for a moment, then when we went ahead again, in backing off of the boat, when we went ahead again we came up in this position. (Showing).

Q. Came up on the starboard side?

A. Came up on the starboard side. And when we came up again she was on our port side, with her masts and stacks and everything pointed toward us. She was still settling, lying right on her starboard. Then the captain of the Indian ordered a boat lowered from the Indian, and they went down and walked all over the guard of the Kitsap and picked up this line again and took it back on board. Just about that time there were still fog whistles sounding all the time and we were sounding fog whistles all the time, and then he sounded the danger whistle. And so pretty soon another boat came up along here, which I learned was the Telegraph and she came up right in this position. We could see the glimmer of her light before we could distinguish what kind of a boat.

Q. This position, you mean?

A. Between that. I heard the captain—at that time I

had gone up from the stem of this boat, up on to the upper deck alongside the pilot house. No one was up there except the quartermaster and some officers of this boat but I went up and stood alongside the rail and was watching the proceedings, and this boat came in here, and I heard the captain say, the captain of the Indianapolis—

MR. MERRITT: I object as incompetent, irrelevant and immaterial.

Q. Do you know whether any of the officers of the Kitsap were there at the time?

A. Up here on the deck at the time?

Q. Yes.

A. I know the captain was there and some of the quartermasters and the mate, I think he is mate, I would not be sure as to that.

Q. Of the Kitsap, do you know whether any officers or crew of the Kitsap were there?

A. Up on the upper deck of our boat?

Q. Yes.

A. I think so. I believe that the captain of the Kitsap, or the man that they called captain, a tall fellow, I think he was up there. I saw him either up there or on the deck below at that time, I would not say positively that he was up there, but anyhow when the—

MR. MERRITT: I renew my last objection.

Q. If you are not sure he was there we will not call for that.

A. I would not swear that he was on that deck at that time.

Q. You had seen the master of the Kitsap?

A. I had seen the man they said was the master of the Kitsap. I was not acquainted with him, I did not know him.

Q. Now to go back, captain. At the time when you heard these whistles and before you saw the light or the hull, either one, what was the condition of the Indianapolis as to operation of the engines, as near as you could tell from the deck and her speed?

A. Why, her speed—she had—her engines had been

stopped. There was no vibration of her engine for some time. I believe that she had a very little way ahead at the time these boats came together, but that was very slight. She backed away from that boat immediately she struck and she was backing a few minutes prior to the collision because I could feel the vibration.

Q. Are you using the word "moments" now with reference to the common term "minutes," or do you mean a small portion of time?

A. I mean a small portion of time.

Q. Did you see the Kitsap as she loomed out of the fog, did you see what apparently she was doing?

A. Yes, I saw her when she looked out of the fog.

Q. What did the Kitsap appear to be doing?

A. She appeared to be moving quite rapidly, swinging to starboard on a port helm, that is what she appeared to be doing.

Q. Would you feel like giving an estimate on her speed?

A. No, I could not. I would not estimate it in miles how fast she was going, but she was moving quite rapidly. Quite rapidly.

Q. You saw the collision as it took place?

A. Yes sir.

Q. Which vessel was the moving object in the collision?

A. The Kitsap. Our speed, if any ahead, I could not say that we had speed ahead, but if any, it was very slight, because we had run under a slow bell, we had been moving slowly for some time prior to the accident, before there was any idea of being an accident.

Q. When you said you apprehended the possibility of an accident, did you think the possibility would result from the speed of the Indianapolis, or the vessel that you heard whistling?

MR. MERRITT: I object as incompet, irrelevant and immaterial.

A. Why the Kitsap, the vessel that was approaching; the Indianapolis was under control.

CROSS EXAMINATION:

Q. (Mr. Merritt). You do not know where the vessel was when you came on deck, do you, captain?

A. Where the Kitsap—

Q. Where the Indianapolis was?

A. You mean the exact place where she was?

Q. Well, anywhere near, approximately?

A. I know near where she was, she was somewhere near the bell buoy.

Q. Could you hear the bell buoy?

A. No.

Q. Could not see it?

A. No.

Q. Could not see the land?

A. No.

Q. Very heavy fog?

A. Yes.

Q. Heavy all the way across?

A. Heavy all the way across.

Q. Heavy, solid fog, was it?

A. It was fog all right.

Q. There was no time you could see anything very far ahead of the vessel, away from the vessel?

A. No sir.

Q. Now you came up and went right forward?

A. Yes sir.

Q. And remained out there in the eyes of the vessel all the way?

A. Yes sir.

Q. Did you hear any of the bells given on the Indianapolis to the engine room?

A. No.

Q. Any time?

A. No.

Q. The only way you judged of her speed was the feel of the vessel?

A. Yes sir.

Q. Now you say that you heard this other vessel whistle?

A. Yes.

Q. You had been hearing whistles all the way across?

A. Yes, soon after. Numerous whistles off to port.

Q. You heard one ahead before that, did you?

A. I heard off to port two whistles I thought, and this one seemed to be from dead ahead.

Q. How long before the collision did you hear this whistle?

A. Oh, I heard this whistle some time.

Q. About how long?

A. Oh, I should judge I heard it three minutes.

Q. About three minutes?

A. Yes sir.

Q. Where did you hear it?

A. I heard it as though it was across our bow, swinging on to us in that shape.

Q. Which quarter did you first hear it?

A. When I first noticed it particularly it was on the starboard quarter.

Q. You did not hear it at any other place?

A. Well, I heard it over a little on the starboard quarter when I first noticed that whistle particularly, that whistle, I noticed it more particularly as it commenced to come on us. I was paying attention to all the whistles.

Q. It remained approximately in the same relative position to the Indianapolis all the time, from the time you first heard it?

A. No sir, it seemed to swing on to us.

Q. Swing closer to you?

A. Yes.

Q. About how many points or degrees on your starboard quarter, or your bow when you first heard it?

A. It was almost dead ahead.

Q. And remained in that general position, except as coming closer to you?

A. You could tell, a man standing in my position, could tell it was a vessel swinging.

Q. You think that was about three minutes before the collision?

A. As near as I could say.

Q. About how many whistles did you hear?

A. Oh, several.

Q. How was the Indianapolis running at this time?

A. Slow.

Q. All the time?

A. I think her engines were stopped dead still at this particular time.

Q. When you first heard it?

A. No.

Q. About how long after you first heard it would you say that her engines stopped?

A. I think that the Indianapolis was stopped dead still, no vibration of her engines whatever, right away after I first heard that particular whistle to notice it.

Q. Now that particular whistle when you noticed it was the one you heard just a trifle off the starboard bow?

A. First, when I first heard it.

Q. The Indianapolis remained still at that time, her engines from that time on?

A. Until she backed.

Q. Never went ahead after that time?

A. No sir, I do not think so.

Q. And you think it was about three minutes later that the collision occurred?

A. I think so.

Q. And then this other vessel kept coming closer and closer?

A. Yes, kept approaching until she loomed.

Q. How far away was she when she loomed?

A. That is a little hard to say. She was not very far. I could not measure that distance in feet. She was very close.

Q. Very close?

A. And she loomed.

Q. You say she was coming for your starboard bow?

A. Yes sir.

Q. About the point that you have shown on diagram one?

A. Yes, as near as I could remember, and she was swinging and she swept into us just in that shape.

Q. Now she was forward of your bow?

A. Just about abeam of the bow, just like that (showing). She is right there and when she swung she came right around like that.

Q. And you thought that the Indianapolis was still at that time or backing?

A. I think, yes. I think that if he had put his helm to starboard when I first saw her that we would have bumped sideways.

Q. Just answer the question. You thought the Indianapolis at that time was standing still or backing?

A. At what time?

Q. At the time the Kitsap loomed in sight?

A. Yes sir.

Q. And the Indianapolis did not go forward from that time on?

A. The Indianapolis, I could not say whether she lost her way entirely. It seemed to me that she backed away immediately. She might have had a little way ahead very slow when they hit, I would not say that the Indianapolis did not have any way ahead when they struck, because I think she might have had a little way ahead, but she backed away immediately, showing that her speed, if any ahead, was slow.

Q. She did cut into the Kitsap a considerable distance?

A. As near as I can tell she cut into the hull part about right forward of the pilot house and wiped her stem, the speed of the Kitsap, in other words, across our bow seemed to me that it tore the Kitsap some fore and aft. I never saw her when she came up, but from my view of it, looking there, it looked to me when she hit our bow that it cut in and ripped her a little fore and aft with the momentum she had.

Q. Did the Kitsap move forward after she struck?

A. Yes; we backed.

Q. How far?

A. I could not say. May be half her length.

Q. You thought she moved forward half her length?

A. We backed away right away, then just barely lost sight of her and we went ahead again on the Indian and came

up to her again, and then she swung around in that position so it looked to me as though she went ahead probably half a length.

Q. You came back in approximately the same position you struck her, didn't you?

A. No sir, we came back—

Q. Where did you come back against the Kitsap, did you—

A. We came back against her port bow. (Showing).

Q. Where, with reference to the cut?

A. Just like this.

Q. Forward or aft of the cut?

A. Well now, I could not say whether our bow was forward, I think it was about abreast of our bow, the Kitsap's nose stuck out beyond us about like that. We took the passengers over about abreast of her pilot house.

Q. Came back to just about where the cut was?

A. Yes I should think so.

Q. Now did the Indianapolis swing any from the time she first struck until after she backed away?

A. I could not say as to that whether she swung. It is a usual thing in a propeller backing will swing some, one way or the other. I do not know what way she falls off when she backs. Most propellers will fall off one way or the other.

Q. You would not tell how the Kitsap's engines were working?

A. No sir.

Q. Could you see any foam on the water?

A. I am of the opinion from her movements that she was backing?

Q. You mean that in your opinion the Kitsap was backing at the time you hit her?

A. Yes sir.

Q. Now could you give the approximate time, prior to the collision, that you felt these vibrations of the Indianapolis?

A. The backing?

Q. The backing, the vibration of the backing motion of the Indianapolis, how long before the collision did you feel that?

A. Oh well, she backed, she backed just before I could see the glimmer of light.

Q. Well, that was just a moment you say before.

A. Yes; of course I do not know whether they could see more from above than I could, possibly they could. I had not been there so very long, and I came out from the light.

Q. Before that she had been sagging along under whatever momentum she had?

A. There was no vibration from her engines for some time prior to that.

Q. And just before or just about as you saw the Kitsap, you felt this vibration on the Indianapolis?

A. The Indianapolis was entirely under control.

Q. That is a conclusion, captain. I just ask you the fact. I say, just at the time or about the time you saw the Kitsap, you felt this vibration from the backing motion of the Indianapolis?

A. Yes sir.

Q. And that is the first motion that you had felt on the Indianapolis that would indicate anything to you about her speed, before that was simply absence of any motion?

A. I knew the Indianapolis had slowed down when I came on deck. I knew that vibration stopped, and she was not going at all, that is she was not working her engines.

Q. When, from the time you came on deck?

A. No, not from the time I came on deck. When I first came on deck she was going ahead slowly. She had stopped. Her speed was going ahead slowly, then she stopped working her engines.

Q. She did not work her engines forward after that time?

A. She did not work engines forward at all after that time.

Q. After you came on deck and when you thought you were about the bell buoy?

A. Prior to the time I came on deck I felt her stop or slow her engines, prior to the time I came on deck.

Q. That was before you got to the bell buoy?

A. That was before I got away up on deck, that was when I was passing through somewhere I noticed her stop her

engines or slow them. She seemed to open out again for a little ways, then she slowed again.

Q. And from that second slow she never worked her engines forward at all?

A. No, I do not think so.

Q. Just remained, as you think still, with the engines still until she started back.

A. You understand I would not be sure how long before the collision occurred.

Q. You said about three minutes.

A. I think it took about that time.

Q. The angle of the collision was about 45° was it not?

A. Well, I think so, she was headed just like that when she came into us.

Q. About as you have shown on the second drawing?

A. Yes sir. She was coming just like that, and we were backing and she hit. And she was coming pretty fast and I am of the opinion that whoever ran out of the pilot house, I don't know who it was, some one ran out of the pilot house just before we struck and ran back about abreast of the stack, it is only a short ways, and then ran back in the pilot house, and I am of the opinion that he probably backed on the Kitsap when he went in.

Q. Of course you do not know what he did.

A. I do not know but I am of the opinion —

Q. Now in your third diagram there, mark the vessel that you intend to be the Indianapolis and the one you intend to be the Kitsap?

A. This is about the way they lay. I may have this drawn off a little too much. That is about the way we lay when we took the passengers on board.

Q. Mark them to indicate which is the Kitsap and which is the Indianapolis.

A. This is the Kitsap and this is the Indian.

Q. As you lay alongside the Kitsap the Indianapolis kept moving her engines a little, did she?

A. No.

Q. Did not move them at all?

A. Not after we came up and took hold of her. We

went ahead to get hold of her, and then we lay still there. I did not feel any vibration of the engine.

Q. Did you notice whether they were working at all?

A. I noticed that they were not moving at all.

Q. You noticed the engines were not moving after she came back against the Kitsap for the second time.

A. Not perceptible to us there at the bow.

Q. Well, you would have noticed if there was motion?

A. Yes, I think I would. There was no movement on the Indian when she came back and took hold of her, other than was necessary to get hold of the line and get her alongside close enough to take these passengers off.

Q. I say after he got hold of her the second time, you did not notice any movement of the engines at all?

A. No. Very little excitement on either boat, considering.

Q. I understood you to say that you did not hear any of the engine bells on the Indianapolis?

A. No.

Q. You did not hear any on the Kitsap?

A. Well, she has got electric bells. It is almost impossible unless a man is a steamboat man, it would be almost impossible to tell what bell he gave.

Q. You say when the Indian struck the Kitsap the Kitsap swung to starboard, her bow swung to starboard?

A. How is that?

Q. When the Indian struck the Kitsap the bow of the Kitsap swung to starboard?

A. No, she was swinging to starboard all the time.

Q. Did she continue to swing that way?

A. Well, she was swinging. When she struck we backed right away. I think she did swing some more because when we came up she had swung that much. She was swinging all the time when we hit her hard.

Q. Did you notice any difference in the way she swung, after she was struck than before?

A. No.

Q. There was a good deal of excitement about that time?

A. No, there was not a particle.

Q. Did you stay right there in the eye of the vessel after the collision?

A. I went back about ten feet.

Q. When you saw she was going to strike you got away from the bow?

A. I went back about 10 feet. I had these three people I saw there back before.

REDIRECT EXAMINATION:

Q. (Mr. Bronson). You were on deck about three minutes before the collision, you think?

A. I should think about that.

Q. You have not any way of being sure, have you captain, whether you had passed the bell buoy or not, that is you did not see the bell buoy?

A. No, I did not see the bell buoy.

Q. You might have been past the bell buoy when you went on deck?

A. Oh yes, I think I saw Alki Point, and when I went on deck we were about the bell buoy.

Q. You think you were inside the bell buy?

A. Yes, that is my opinion.

Q. Of course it might have been possible that you had passed it before you got up there?

A. Yes, I was not looking for the bell buoy?

Q. When you said then that you could not see it, you meant that you did not see it?

A. I did not see it. I do not know whether I could.

Q. Now counsel asked you or suggested to you that the Kitsap was backing when the collision took place. Which do you mean, that the vessel was backing through the water or her engines were backing?

A. The moment we struck?

Q. Yes.

A. Well, I am of the opinion that the engines were backing at the time we hit.

Q. That is the engines of the Kitsap?

A. Yes, both boats.

Q. You did not mean by that expression that the Kitsap was backing through the water?

A. Oh no, no. I mean who ever this fellow was that went out of the pilot house, whether he got back in time to back her before we actually came together. There might have been other men in the pilot house. I could not see. I could not see who was in the pilot house, but some one ran out and then ran right back again. I do not know whether it was the captain who went out or who it was.

Q. Now do you think that you would necessarily notice a very slight forward motion of the Indianapolis' engines, such as might be sufficient to just press her up against the Kitsap, to keep them together? Might they not be going fast enough for that without your noticing any vibration?

A. Oh yes, very possibly. Certainly, if a man depends on the system of communication that you have with your engine room. You can speak down and tell the engineer to work her very easy, just barely turn over, and that would not be perceptible to anybody on deck.

Q. But they were not moving fast enough to create any vibration?

A. None at all, no vibration at all.

Q. (Mr. Merritt). When you said you heard the vessel approaching, these whistles kept getting closer and closer on your starboard bow?

A. Yes.

Q. And the angle decreasing somewhat all the time?

A. No, it was pretty—right on our starboard bow, came right toward our starboard bow.

Q. At about the same angle, nearly the same angle, as when you first heard it?

A. When the whistles became pretty alarming, then I said like that, they were approaching right like that, every whistle was so much nearer to me, I was afraid she was coming pretty close, right square like that (showing) coming right toward us.

Q. (Mr. Bronson). In that connection captain, you are familiar enough with navigation of vessels to know whether

or not the action of the vessel which was approaching was that of a vessel swinging on a port helm to starboard, first approaching and ultimately turning and crossing the bow of the Indianapolis, are you not?

A. Yes sir.

Q. Is that what she was apparently doing?

A. When she hove in sight she was swinging on her port helm, there is no question about that.

Q. And she was swinging from the position first approaching you and gradually swinging across your bow?

MR. MERRITT: I object as leading.

A. Yes sir, just like that. (Showing). When she hove in sight she was swinging. Whether he could see our lights, probably he could see our lights before we could see his, because we were the bigger vessel and had a great deal more light. The chances are that the captain of the Kitsap could distinguish the color of the light in the fog from our vessel some time before we could distinguish his, his being the smaller.

Q. Could you take a piece of paper and describe the course of the Kitsap as indicated to you by the sounds. Place the Indianapolis on the diagram and indicate your position. Could you describe with a pencil the course of the Kitsap as determined by the sounds that you heard of the whistles etc., and what you saw?

A. From the time I first heard the whistle?

Q. Yes, and from what you ultimately saw.

A. I don't know where the Kitsap was, where she came from or where she was going, I haven't the remotest idea. I don't know where she lay at the dock or anything about it. I never inquired and I do not know the first thing about it.

Q. I mean to draw it with pencil on paper so that.

A. There is the Indian, I will mark it with an "I." Now it seemed to me that the Kitsap or some whistle, I could hear that over here, and from the sound of the whistles it sounded to me as though the vessel was coming out, swinging out, and when I first heard the whistle distinctly they seemed to come from here.

Q. Now start at that point and draw it down here.

A. In my opinion, I was of the opinion, having run across this line so long, that there was some vessel backing out from the dock and turning around and swinging down the Sound, the same as I heard vessels on the port bow when you come into the harbor and would be liable to cross the bow of these vessels, and here this one was liable to cross our bow. I was satisfied of that in my own mind. Now she was coming like that. (Indicating on diagram.)

Q. Draw a dotted line, as near as you can determine her course.

A. From the sound of the whistles, and me standing up in here the sound of the whistles, they seemed to be making right straight on us you see like that, and when she hove in sight she was swinging to starboard with a port helm. That is the way these whistles seemed to come on and they kept coming nearer and nearer.

Q. Carry the dotted line on up?

A. Well, she hove in sight here, and she was swinging like that.

Q. Mark that with a K.

A. (Does so). Of course I would say that the Colman dock that we were bound for—

MR. MERRITT: I object to the statement of the witness. It is shown he does not know where the Colman dock was.

Q. Did you hear the horn on the Colman dock?

A. I did not notice it. I did not know the horn on the Colman dock. I knew from the position we were in. I saw Alki Point when we passed Alki Point. I had been reading a magazine, I threw it down, got up, lit a cigar, fooled around and after a while went on deck. I am satisfied we were past the bell buoy, in my mind, although I do not know it positively, I am just as satisfied we were away past the bell buoy when I went up as that I am sitting in this chair.

Q. (Mr. Merritt). Away past?

A. Past the buoy, some distance past it.

Q. But at least three minutes before—after you got out on deck, at least three minutes before the collision took place?

A. Yes sir.

Q. And went right out on the bow there; the position that you have marked in this diagram as K, is the position in which you first heard the whistle of the Kitsap?

A. Yes sir.

Q. (Mr. Bronson). That is to identify it as the Kitsap?

A. That is to identify this whistle coming on to us. I had heard the whistle for a while a little on our—almost dead ahead—a little on our starboard bow. And I heard whistles here, down on the port side, and some that sounded to almost come abeam from us. I do not know what boats they were of course, but I know this boat that pulled out here turned out to be the Telegraph.

Q. (Mr. Merritt). These other boats that you had heard were not the same boats that proved to be the Kitsap?

A. This whistle that I heard was distinctly proven to be the Kitsap.

Q. The other whistles that you have spoken of were not the same whistles, they were other boats?

A. They were other boats, those that I heard on the other side.

(Testimony of witness closed).

FRANK WALKER, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). What is your occupation?

A. Marine surveyor and naval architect.

Q. What experience have you had in that business?

A. I have had life-long experience.

Q. Well, just about how many years?

A. In the business of Marine surveyor?

Q. Yes sir.

A. 12 or 14 years.

Q. What previous experience had you in handling and dealing with ships?

A. As a boy I had sailing ship experience, four years in a sailing ship as apprentice to second mate of a ship, and then I went ashore and learned the business of shipbuilding and marine engineering. Then I went through a college and took

a course in Naval Architecture. Then went to sea again as engineer, and then I remained ashore in various ports of the world taking charge of shipbuilding plants. Came out to this coast and took charge of the Puget Sound Dry Dock company's plant. Then I commenced business as a marine surveyor and naval architect and have been in it ever since.

Q. Now did you see the floating dock that was anchored there and the Kitsap?

A. Yes, on a number of occasions.

Q. Did you follow, in a general way, the salving operations of raising the Kitsap?

A. Not intentionally, I took a little interest in watching how they were getting on, but I did not follow them hour by hour or day by day.

Q. Did you notice where the dock was when she was anchored over the Kitsap, or when she was supporting the Kitsap?

A. Yes, I noticed approximately the position of it.

Q. What was it?

A. Almost in a straight line between the Colman dock and the Grand Trunk Pacific Dock.

Q. And how far off shore?

A. Oh, I should say about 400 yards.

Q. Did you see the Kitsap when she was raised?

A. I did.

Q. I will ask you to examine libelant's exhibit "E", which is a photograph and is supposed to represent the apparent condition of the Kitsap after she was raised, and ask you to state whether or not the appearance there is that of the vessel as raised above the water, or as she was afterwards carried over by the dock, and how the opening was made here in which this big log lies?

A. When I saw her at West Seattle she was on the beach at West Seattle, I went aboard the vessel and they were cutting away part of the house to get these logs in.

Q. In other words they were cutting an opening there?

A. They were cutting and getting this log in position.

Q. Then this picture does not represent the Kitsap as she laid underneath the water?

A. No, no, most decidedly not. There was considerable damage done to the vessel in raising her.

MR. MERRITT: I move to strike the answer as not responsive to any question, and the witness is not shown to know.

Q. What did you base that statement on that there had been damage done to her?

A. She had been grappled for and raised by cables and then after they had raised her they had to do considerable of this cutting away to get their salvage gear in position.

Q. Where is the pilot house?

A. It is not on this picture.

Q. Where would it be?

A. Somewhere in this location here.

Q. Well, would it rest over the position occupied in part by this log?

A. I should say a little abaft that position.

Q. Now, I will ask you to examine libelant's exhibit "H" and state if you can identify that, from the appearance of the vessel when she was put on the beach?

A. Well yes, you could not say this was on the beach. This was when they had her on the dry dock after she had been beached and raised up on the dry dock and lifted clear of the water. A good deal of this damage done here had been done by the cables that had been around her in the same vicinity as the cut made by the Indianapolis.

Q. Well, is there anything here which would indicate where the cut made by the Indianapolis was, or that you could identify it from?

A. No, that is not a very good photograph.

Q. Well, take libelant's exhibit "F". What does that indicate relative to it?

A. This is one of her mooring cleats, that is about where the Indian came into her, where they came in contact. That is the main deck line there.

Q. Well, would the appearances in this photograph show the actual condition of the vessel immediately after the accident?

A. No.

Q. I will ask you to examine libelant's exhibit "G".

A. This is practically the same thing. This is where the bow of the Indian went in.

Q. Well, does this photograph particularly, as to the upper part of it show the vessel as she was immediately after the accident?

A. That is very hard to say, because there had been so much done right in that same place. Damage had been done had been increased considerably by the wires and cables and by the cutting away.

Q. Is part of the upper part of this cut away?

A. Yes, that part was in collision. It was very defined on the deck, the shape of the bow of the Indianapolis.

Q. When you first saw her?

A. Yes, very well defined. None of these pictures really show anything, convey anything.

Q. Are you familiar in an approximate way, I do not mean accurately, but could you form an approximate estimate of the weight of the Indianapolis?

A. Oh yes, approximately.

Q. Well, just as near as you could without having investigated what it is.

A. Weight of the Indianapolis would be approximately 1500 or 1600 tons.

Q. And what is the weight of the Kitsap, that is as near as you can approximate it?

A. 500 or 600 tons.

Q. She is a wooden vessel?

A. Yes sir.

Q. From your experience, did you see enough of this cut in the Kitsap to form a fairly accurate idea of what it was after the collision took place?

A. Yes, I took the angle of the cut.

Q. From your experience, could the collision between the Kitsap and the Indianapolis have been as slight in penetration as it was, if the Indian had been under any considerable headway and she had been the moving body?

A. Had the Indian had any considerable headway she would have gone through the Kitsap.

Q. Can you take a piece of paper and indicate the angle of collision?

MR. BRONSON: I offer in evidence the diagram drawn by the witness Percival.

Papers marked Claimant's exhibits "10" and "11" respectively, filed and returned herewith.

A. (Witness draws diagram). This is about the angle of the contact.

Q. As indicated by the cut?

A. There was an actual from of the bow of the Indianapolis lying right across her main deck, the planks were cut away clean extending in board about seven or eight feet.

MR. BRONSON: I offer this diagram drawn by the witness, in evidence.

Paper marked Claimant's exhibit "12", filed and returned herewith.

CROSS EXAMINATION.

Q. (Mr. Merritt). You did not see the Kitsap when she was first raised, did you?

A. As soon as she was landed on the beach at West Seattle I went over and examined the Kitsap.

Q. At that time she was lying in the mud?

A. At that time she was lying with her main deck above the water. When I visited the ship they were cutting away to get spars across the deck fore and aft.

Q. Cutting away the deck?

A. Cutting away the cabins and decks and rail and bulwarks on the port side.

Q. And part of the hole that was cut was underneath the water and she was lying a little on her port side?

A. No, she was lying on her starboard side.

Q. That portion where the cut was was underneath the water at that time was it not?

A. No, not when I saw it, it was above water.

Q. Did you see the cut?

A. Yes sir.

Q. They did not cut any portion of the hull?

A. They cut the bulwarks and the rail in that vicinity.

Q. And the hull?

A. That was part of the superstructure, the hull.

Q. Part of the superstructure they cut away so as to get her over to the East Waterway?

A. Yes sir.

Q. But the part of her hull below that they did not cut any of that, did they?

A. No, they did not cut anything below the main deck line. The wires had torn considerably up.

Q. The wires had torn her somewhat down underneath?

A. No, right on the edge of the damage.

Q. That was very clear to see?

A. You could see what the wires had done, the marks of the wires were cut right into the tanks.

Q. It was quite clear to see the cut that the Indian had made?

A. Quite clear.

Q. Did you ever see a vessel that had been in collision with another vessel?

A. Many times.

Q. And did you ever see a vessel of one third the size of another vessel that had been cut in two by a collision?

A. Yes, I was on one at one time.

Q. Cut right in two.

A. Cut right in two.

Q. You say the weight of the Kitsap is 500 or 600 tons?

A. Yes, somewhere about that, approximately.

Q. Where do you get that?

A. Well, from my experience in shipbuilding. I have built a number of similar craft, a number of vessels of all descriptions, and I have a very fair idea of the weight of a vessel, we make all our calculations from weights.

Q. The Kitsap was about 127 feet?

A. I do not know the dimensions of her particularly.

Q. Do not know what beam or depth?

A. I know the general get-up of the vessel.

Q. Do not know what cargo either vessel had at that time?

A. Well, I know they had no cargo of any account. That is not their business.

(Testimony of witness closed).

Hearing adjourned until Wednesday July 12, 1911 at 10 A. M.

Seattle, Washington, July 12, 1911.

Continuation of proceedings at 10 o'clock A. M.

PRESENT: Mr. Merritt, for the libelant. Mr. Bronson, for the Claimant.

DAVID ROGERS, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). You are employed at the Moran company's plant?

A. Yes sir.

Q. And have been for some time past?

A. Yes sir.

Q. Were you last December?

A. Yes sir.

Q. Were you engaged in repairing the stem of the Indianapolis after her collision with the Kitsap?

A. Yes sir.

Q. What is the size of the stem, just in dimensions?

A. I think about an inch and a half by six or seven.

Q. Did you have occasion to observe the condition of the stem while you were repairing, I suppose you did, naturally, of course?

A. Yes sir.

Q. And what was the nature of the injury to the stem?

A. Well, the stem was bent about probably two inches for about two feet in length, that is for two feet in length it had a definite kind of a bow in it.

Q. How was it bent, which direction?

A. It was bent over to port, shoved over to port.

Q. What was the condition of the buts and frames of the Indianapolis?

A. Well, I think, if I remember right, the first three or four frames were bent and they had to be straightened.

Q. On which side?

A. We had to straighten them on both sides.

Q. Which way were they bent?

A. All over to port.

Q. How long an experience have you had in building or repairing ships?

A. About thirty years.

Q. Would the injury to the stem of the Indianapolis have been in the same condition, if she had struck an object moving straight ahead as appeared in this case?

MR. MERRITT: I object as incompetent, irrelevant and immaterial. The witness has not been shown competent to testify.

A. I do not understand the question.

Q. Well, what motion of the Indianapolis was indicated by the injury which appeared to the stem when you saw it?

MR. MERRITT: I renew my last objection.

A. Something hit her on the starboard side.

Q. Moving from starboard to port?

A. Yes sir.

CROSS EXAMINATION:

Q. (Mr. Merritt). What is your business?

A. Shipbuilder.

Q. Have you been to sea?

A. Yes sir.

Q. Now you say that this injury indicates a movement from the starboard to the port side of the Indianapolis?

A. A hit on the starboard side.

Q. It might also indicate the movement of the Indianapolis from the port to the starboard side?

A. No sir.

Q. Could not. If the greater resistance of the object which the Indianapolis struck was on the starboard side, would it not make the same dent, the same bending?

A. Well, but it was all out on the port side the same as the starboard.

Q. It was bent over from starboard to port?

A. Yes.

Q. And if the greater resistance was on the starboard

side—In other words, if the Indianapolis struck at such an angle that it was moving toward the starboard side and struck a body of greater resistance there, it would dent and bend her, whether the body which she struck was moving or not?

MR. BRONSON: I object, it is too indefinite, being to such an extent as not to be intelligible—I do not know what counsel means by it.

A. I do not understand the question.

Q. Suppose the Indianapolis struck the Kitsap at an angle of 45° , struck it forward of her beams that held the deck of the Kitsap, moving laterally against these beams, would not that tend to bend the stem of the Indianapolis?

A. Yes sir.

Q. That would be true, whether standing still, whether the Kitsap was standing still or moving?

A. Yes sir.

Q. You made certain repairs to the Indianapolis besides the repairs to the stem at this same time, did you not?

A. Yes, I took four plates off.

Q. You made some repairs to the bulwarks and rail on the starboard side near the stern, didn't you?

MR. BRONSON: I object as incompetent, irrelevant and immaterial; it has nothing to do with this case.

A. She has not any bulwarks aft that I know of.

Q. You did make some repairs in the aft end of the Indianapolis, didn't you?

A. Yes sir.

Q. You kept a record at the time of the repairs that were made?

A. No sir.

Q. Did not you keep a little book with the record of these repairs?

A. Only of the repairs I make, I took that down.

Q. Have you got that book with you?

A. No sir.

Q. You do not remember the extent of the repairs that you made on the stern?

A. All I took down is when I go over the work with the surveyors, what I have to do.

Q. You do not remember the extent of these repairs on the stern?

A. On the stern, I think, if I remember right, we took a plate off in the dining room.

Q. You do not remember the rail on the starboard side, aft?

A. No, I do not remember ever doing anything aft.

Q. You put in some new plates in her bow?

A. Yes sir, four.

Q. These plates could have been straightened?

A. One was broke.

Q. The other plates might have been straightened without putting in new ones?

A. No sir.

Q. Could not?

A. No sir.

RE-DIRECT EXAMINATION.

Q. (Mr. Bronson). Did you mean in answer to counsel's question with reference to striking the Kitsap, if the Kitsap had not been moving, that in case the Indianapolis struck the Kitsap at an angle of less than forty five degrees, so that she struck her with really the side of her stem, that it would cause the stem to bend over to port, striking on the starboard side?

A. Whatever it was that hit at that part hit that way, because if it had hit end on the stem would have went aft instead of going to port.

Q. Your answer to counsel's question practically included then her striking, or the supposition of her striking the Kitsap at an angle of less than 45° , sort of striking sideways on her starboard bow?

A. Yes sir.

Q. Such an injury, however, would not be occasioned by her striking straight on.

A. No sir.

Q. (Mr. Merritt). But if she struck at any angle other than an angle of 90° that bending would occur, would it not?

A. It would occur that way, because—

Q. When she struck at any angle less than 90° she had

a lateral motion against the deck of the Kitsap, and that lateral motion would tend to bend her in the opposite direction, would it not?

A. Yes sir.

Q. Just where were these plates bent, can you give the exact location of the bending?

A. They were along about the water line, a little below the water line, probably a couple of feet below and a couple of feet above, as I remember.

Q. How far back from the bow did these dents and plates extend?

A. I think, if I remember right about the 3rd or 4th, about six feet.

Q. Did the bow of the Indianapolis indicate having struck anything hard, any metal or anything of that kind?

A. No sir, I did not see anything.

Q. You do not know whether it struck the heavy tank on the Kitsap, do you?

A. No.

Q. That striking the heavy tank would tend to bend it, would it not, especially if it struck at an angle?

A. I do not know. I do not know what she hit at all.

Q. It would tend to bend it if it struck a heavy tank?

MR. BRONSON: I object, unless it is shown what she struck, the character of the tank, etc.

A. The dent was not deep enough to have hit a large oil tank it was something more sharp.

Q. You mean the bend in the plates?

A. Yes sir.

Q. The bend in the plate was as if the end of a beam had pushed in there or had pushed against a beam?

A. It looked that way, yes sir.

Q. Now the bend in the stem, I understand the stem was bent about two inches?

A. The whole thing was.

Q. That stem might have been bent by striking a heavy oil tank in the Kitsap, might it not?

A. No.

Q. You do not think it was?

A. No.

Q. (Mr. Bronson). As I understand you, Mr. Rogers, all of these questions which counsel has put to you relative to the striking on an angle, you are assuming the angle to be less than 90° up to an acute angle, between the starboard side of the Indianapolis and the side of the Kitsap, that is that she was striking the Kitsap at an angle on the starboard bow of the Indianapolis?

MR. MERRITT: I object, the witness has not assumed that.

Q. Just state, Mr. Rogers, which angle you mean, an angle between the port side of the Indianapolis or the starboard side of the Indianapolis?

A. Well, whatever she hit I don't know, the Kitsap or what ever it was, she came up on the starboard side and hit and went off like to port or something like that.

Q. In other words that the angle was between the starboard side and whatever it was she hit?

A. Yes sir.

Q. And if it was caused by her striking—

A. It was on her starboard side whatever it was.

Q. And the whole bow of the Indian was driven over to port?

A. Yes, if hit the other way the stem would have went aft.

Q. (Mr. Merritt). You mean to say if she had hit at an angle of 45° from the bow of the Kitsap, that the bow of the Indianapolis would have been bent the other way?

A. I am simply saying that it was not hit straight on, because if it had been it would have went aft, and as it was it went sideways.

Q. All you mean to say is that whatever force was exerted and however exerted, whether by the movement of the object hit or movement of the Indianapolis, was from starboard to port of the Indianapolis? That is all you mean to say?

A. That is all I mean to say.

Q. And that force might have been exerted by the move-

ment of the Indianapolis from port to starboard, as well as from the movement of the Kitsap from starboard to port?

A. I do not know whether the Kitsap or the Indianapolis was all on the starboard side, whatever she hit was on the starboard side.

(Testimony of witness closed).

ALLEN McDOUGALL, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). You are employed at the Moran plant, and were at the time the Indianapolis was repaired after her collision with the Kitsap?

A. Yes sir.

Q. Did you observe the condition of her stem?

A. I worked on the stem.

Q. And the plates on the bow?

A. I did not work on the plates.

Q. Did you observe the condition of the plates?

A. I remember the plates were dented.

Q. Which way was the stem of the Indianapolis bent?

A. Bent over to the port side.

Q. And how were the frames and plates bent?

A. Well, it seemed, as far as I can remember, they were bent over to port too.

(Testimony of witness closed).

MR. — KELLELY, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). You are employed as Auditor of the Inland Navigation Company?

A. Yes sir.

Q. I show you some papers which have been marged 13 for identification, and ask you to state what they are?

A. These are the bills paid at the time of the repairs on account of the collision between the steamers Indianapolis and Kitsap.

Q. Do these bills include anything else than the repairs which were in connection with the collision, so far as you know?

A. Nothing except what was directly concerned.

Q. And includes this pay roll sheet?

A. Yes sir.

Q. Is that the pay roll for the Indianapolis during the time she was laid up?

A. That is the actual roll of the Indianapolis?

Q. Are all these bills paid?

A. They have all been paid.

CROSS EXAMINATION:

Q. (Mr. Merritt). You do not know what repairs were made?

A. No.

Q. You simply know these are the bills paid by the company on account of the Indianapolis?

A. Yes sir.

Q. For certain repairs and certain pay rolls?

A. Yes sir.

(Testimony of witness closed).

FRANK WALKER, recalled, testified on behalf of the Claimant as follows:

Q. (Mr. Bronson). You have already testified in this case?

A. I have.

Q. Examine identification 13 and state whether you are familiar with the bills in question, and with the work to which they relate?

A. Yes, I am very familiar with them.

Q. Are you familiar with the damage for which they were incurred to repair?

A. Yes. These bills cover the damage I surveyed at the time.

Q. Do you know whether or not these are reasonable and fair in amount for the work that was done in repairing the damage?

A. Yes, I passed them as such.

Q. Well, were they reasonable and fair in amount?

A. They were considered so by both the Underwriters' surveyor and myself.

Q. Do they relate to any other repairs than such as resulted from the collision?

MR. MERRITT: I object as incompetent, irrelevant and immaterial. The witness is not competent to testify to what damage resulted from the collision.

A. These bills cover nothing else than the damage caused by the collision of the Indianapolis with the steamer Kitsap.

Q. And they relate to what part of the vessel?

A. To the repairs to the bow and stem of the Indianapolis.

Q. Do they include any repairs to the stern of the vessel?

A. No.

Q. Or to any other part of the ship?

A. Other repairs were made but were kept separate.

Q. And are not charged in this account?

A. No sir.

Q. I call your attention, captain to the item at the head of the Moran company bill: "Docking, cleaning and painting vessel; removing and renewing two plates on each bow; straightening stem bar, fairing four frames on each side forward and replacing same; removing and replacing wood work and fittings in way of above; removing, fairing and returning plates in starboard bulwarks; removing, fairing and returning stanchions and renewing rail in way of above. Painting new work and installing and removing temporary lights, etc." Were all of these things necessary as a result of the collision?

A. Yes sir.

Q. Why was it necessary to clean or paint the vessel?

A. Because the vessel was on the dock such a length of time that the paint that was on her bottom was destroyed.

Q. By what?

A. By exposure.

Q. Was it necessary to keep her on the dock the length of time which is included here, in order to repair her stem?

A. Yes, repair her stem and bows according to the time that is called for in the bill of the Moran company.

Q. Now did you observe the condition of the stem and the bow of the Indianapolis immediately after the collision?

A. Yes sir.

Q. Did you survey it?

A. Yes sir.

Q. What was the condition of the stem and bow?

A. The stem was bent over to port. The bow plates in the same vicinity were bulged in but on the starboard side and on the port side outwards, and the frames and breast hooks and stringers went in the same way. Then there was a slight damage to her bulwark rail and bulwark plating immediately above on the starboard side aft by coming along-side later on.

Q. From your experience in ship building and general acquaintance with the sea, what action of the Indianapolis or of any colliding object would cause the injury to the stem that appeared? I will put it this way: Would the injury which appeared on the stem of the Indianapolis have resulted or could it have resulted from her striking stem on to a stationary object as another vessel?

A. No sir.

Q. What would be necessary in order to produce that injury?

A. A blow from the starboard side.

Q. Suppose that it appeared from the evidence in this case that the Kitsap struck the Indianapolis a glancing blow the Kitsap moving forward, and the bow of the Indianapolis being at such an angle as would present anything like a right-angle to the side of the Kitsap, would the result be the same as appeared in this case?

MR. MERRITT: I object as incompetent, irrelevant and immaterial, and assuming something which is not shown by the evidence, and which the evidence all shows to be not the facts in this case.

A. The damage to the Indianapolis distinctly displayed that the blow was directly from the starboard side.

MR. MERRITT: I move to strike the answer as not responsive to the question and as incompetent, irrelevant and immaterial.

Q. Would the condition of the stem of the Indianapolis indicate that the object in collision with her was a moving

object, moving from starboard to port across the bow of the Indianapolis?

MR. MERRITT: I object as leading.

A. It would strongly indicate that it was caused by some moving object across her bow.

CROSS EXAMINATION:

Q. (Mr. Merritt). You are in the employ of the Inland Navigation company?

A. No sir.

Q. Were you not at that time?

A. Never have been.

Q. Except for the surveying of vessels?

A. Simply as their surveyor when called upon.

Q. You do practically all their surveying?

A. I do, I represent them in damage cases and many other people.

Q. Now you say that this injury to the Indianapolis would strongly indicate a collision with a body moving from starboard to port of the Indianapolis?

A. Yes sir.

Q. It also might indicate a collision between the Indianapolis and a body, the Indianapolis moving from port to starboard, might it not?

A. Not so clearly.

Q. Well, it might indicate it, although in your opinion not so clearly?

A. In my opinion it might not.

Q. You do not think it could?

A. No.

Q. You do not think that injury could have been caused by the Indianapolis moving from port to starboard or at an angle with the object struck which would carry it over from port to starboard?

A. No, I do not think so.

Q. Might not the injury have been caused by the Indianapolis getting into the Kitsap and striking her starboard side of her bow against the heavy timbers holding her deck, holding the Kitsap's deck?

A. My opinion is that the heavy timbers or stringers on the Kitsap's deck did the damage.

Q. Now that might have been caused by the Indianapolis moving against the timbers instead of the timbers moving against the Indianapolis, might it not?

A. Well, it hadn't that appearance.

Q. Well, it might have been caused that way?

A. I could not say.

Q. You drew a diagram the other day in your testimony, showing the apparent angle of collision to be about 45° from the bow of the Kitsap?

A. The center line of the two vessels, yes.

Q. That would carry the Indianapolis from port to starboard, on a port wheel, port to starboard, that would be the line of her advance would be from port to starboard?

A. You mean the line of the Kitsap's advance?

Q. The line of the Indianapolis' advance would be from the bow to the stern rather of the Kitsap, that would be the line of her advance?

A. I do not follow you there closely.

Q. I say the angle which you showed, the angle of collision which you showed by your diagram, would show that the line of advance of the Indianapolis was from the bow toward the stern of the Kitsap?

A. Well, I do not follow that question at all. I cannot see it.

Q. Which way would your diagram show the line of advance of the Indianapolis would be directly at right angles with the—

A. If the Indianapolis was advancing at all she was advancing on a diagonal line there through the center line of the Kitsap.

Q. On a diagonal line.

A. Yes.

Q. From the bow to the stern of the Kitsap.

A. Why certainly. It would be more bow than beam on.

Q. She struck more bow than beam on?

A. Yes.

Q. That would carry her at an angle with the center line of the Kitsap?

A. Well, that diagram I drew showed you the angle.

Q. I say that is a fact that would carry from the bow toward the stern in the Kitsap?

A. In that direction.

Q. And the lateral motion then of the Indianapolis would be toward her starboard side?

A. I do not think the Indianapolis did have any lateral motion.

Q. Lateral motion with reference to the Kitsap then?

A. Lateral motion, as far as I would say the lateral part comes in is the damage caused by the blow, caused on the starboard side of the Indianapolis.

Q. There would be some lateral motion with two objects coming together that way, when striking at an angle?

A. Not necessarily not on both of them.

Q. There would be on the Indianapolis?

A. No sir.

Q. What would be the effect of the timbers there which the Indianapolis cut, and the Kitsap were lighter on the port of the Indianapolis, she would cut back toward the stern if these timbers were light, from striking at an angle?

A. She would cut at an angle which they came together.

Q. And striking her on the starboard side of her bow against the heavy timbers of the Kitsap would tend to bend her bow to port, would it not?

A. It is very strongly, clearly shown.

Q. It would tend to bend the bow of the Indianapolis to port striking the Kitsap at the angle and moving up against the heavy timbers of the deck of the Kitsap?

A. Yes, that is exactly what caused the damage, the Kitsap coming on the starboard side of the Indian caused the damage.

Q. Or the Indian coming on the port side and moving that way against these heavy timbers caused this damage?

A. They don't show that.

Q. You would not give it as your opinion as an expert that it might not have been cause in that very manner, if the

Indianapolis struck and moved diagonally into the Kitsap bringing her port side of her bow against the heavy timbers of the Kitsap?

A. I gave my opinion that the damage was caused when the two vessels came together exactly as I have stated.

Q. But you would not give it as your opinion that the damage was not caused by the movement of the Indianapolis into the Kitsap at the angle which you have indicated, and striking the side of her bow against the heavy timbers of the Kitsap?

A. That is mixed up too badly for me.

Q. Well, it is just the reverse Mr. Walker, of the testimony you have given here. I think you can understand this side of the question as well as the other?

A. You put the question three or four different ways and it is not clear at all.

Q. You have undertaken to testify that in your opinion the cut shows that the cause of the bending was the movement forward of the Kitsap. That is what you intended to say, was it not?

A. I tried to show that my opinion was that the cause of the damage was not exactly the forward motion but the circular movement of the Kitsap, that is what I have been trying to say that is my opinion.

Q. And you would not say that it was not also caused, or might not also have been caused by the forward movement of the Indianapolis?

A. Knowing the facts of the case I do not think it was caused that way.

Q. You would not say that it might not have been caused that way?

A. In that case I would say it might not have been caused that way.

Q. In this particular case, and you judge solely from the cut that you saw in the Kitsap and the bend in the Indianapolis?

A. I judge solely from my experience and from what I have heard, which I know are actual facts in the case.

Q. You are basing your opinion then on what you have heard about the collision?

A. No, what I have seen and heard, putting it together.

Q. And your opinion is based on what you have heard about the collision.

A. My opinion is based on a general common sense point of view.

Q. Is your opinion based on anything you have heard about this collision?

A. Not wholly.

Q. Is it on any part?

A. I told you not wholly.

Q. Is it in part?

A. I base my opinion on common sense point of view, looking at the general view of the case.

Q. I ask you again if your opinion is not based in part on anything that you have heard about the collision?

A. Only from the evidence here, nothing from the outside.

Q. What evidence have you heard in this case, Mr. Walker?

A. Oh, you know what I have heard.

Q. I want the record to show. I want to know whether Mr. Walker has been here and heard any of the evidence in this case?

A. I have heard some of it.

Q. What evidence did you hear in this case?

A. There is one or two days ago I sat here and heard evidence of an eye witness.

Q. Is that the only evidence that you have heard in this case?

A. No.

Q. What other evidence have you heard in this case?

A. I questioned the master of the ship, officers of the ship and I have heard some of the evidence read and I read some of it, and heard some of it.

Q. You base your opinion then upon such evidence as you heard and such as you have read, and your questioning of the master and officers of the ship?

A. Not wholly, I said only in part.

MR. MERRITT: I move to strike out all the evidence of the witness as being hearsay evidence. All the evidence of the witness relating to the cause of the injury to the Indianapolis, and any evidence with reference to how the collision occurred, and how the vessels were moving, if at all, at the time of the collision, on the ground that it is based upon hearsay evidence.

MR. BRONSON: I resist the motion on the ground that Mr. Walker is an expert, and that the evidence in this case justifies the assumption in any event, regardless of the view which he has had of the injury to the vessel.

Q. You made a survey for all of the damage or of all the repairs necessary to the Indianapolis, didn't you?

A. I made a survey of all the damage to the vessel.

Q. That is including any that might have been caused by the collision as well as any other damage?

A. In that instance I only made a survey of the damage caused by the collision.

Q. I say you did make a survey of the other damage?

A. No, made no report on it.

Q. You made a survey of it?

A. No, I made no survey.

Q. Other damage was repaired?

A. There was other damage, general repairs to the vessel.

Q. Did not you make a survey of that other damage?

A. No, no necessity. The owners carried out the work themselves, their own superintendent carried them out.

Q. You had nothing to do with any other damage except—

A. Survey report signed by both the Underwriter surveyor and myself in the case.

Q. The Indianapolis was on the dry dock for eight days, was she?

A. The bills show.

Q. For the number of days shown in this exhibit 13 here?

A. I do not carry the number of days she might be in the dry dock in my head. The bills will show.

Q. You testified, Mr. Walker, as I recollect that these bills were correct?

A. I say the bills show and they are correct. I O. K'd them at the time. I have forgotten now. I could not recite every item on that bill.

Q. Then she was on the dry dock the number of days shown in this bill?

A. Yes sir.

Q. And it is your opinion that a vessel being in a dry dock for eight days absolutely requires repainting her whole hull?

A. It certainly does from the water line down.

Q. Part of that time she was being repaired on her stern for damage that she had had before the collision, with the dock in Tacoma, was it not?

A. There was slight repair on her stern, and the people went along concurrently with the work, it did not delay the vessel, but it was a very small job.

Q. Now this item of demurrage, \$400 a day. You do not know whether that was a reasonable item or not, do you?

A. I have nothing to do with that.

MR. BRONSON: We do not offer to prove that by him.

Q. You do not know about these items for services during that time?

A. What services?

Q. Of the sailors or crew of the Indianapolis?

A. No, I haven't anything to do with that.

Q. All you know about this item for material used and the men employed in making repairs, together with the two items for your service and Captain Fowler's service?

A. That is all.

Q. That bend that you speak of was near the water line, was it, the bend you speak of in the plates of the Indianapolis was near the water line?

A. Below and above.

Q. Extending about two feet up and down and some six feet back of the bow, didn't it?

A. Yes, somewhere about that, I could not say exactly. My survey report shows it.

Q. Only one plate was cracked?

A. I do not remember even that. I make hundreds of these in the course of a year, and this is so long ago.

Q. You could not remember now that some of these plates were not cracked at all?

A. Some were not cracked, most decidedly they were not, but they were bent. I think the bill head shows it. I do not think there is any necessity asking me all these questions when it is written down.

Q. Do not remember about this rail, don't remember particularly about that, that was renewed?

A. Well, I think Mr. Bronson has a document that will show exactly what was the damage as I wrote it down at the time.

Q. I say do you remember about that rail, that was repaired and renewed?

A. There was a rail splintered.

Q. Where was that?

A. On the starboard side.

Q. Where?

A. Toothpick rail, maindeck rail, saloondeck rail.

Q. How far from the bow?

A. Wait a minute please until I look at my survey and I will tell you all about it.

MR. MERRITT: I ask that the witness now produce, and ask counsel to produce the report of survey of this witness of this damage.

MR. BRONSON: So far as the damage is concerned I am willing to use it. So far as the narrative of this casualty is concerned from hearsay, I decline to produce it. If you want the statement of the witness as to the nature of the damage I am willing to produce it but I am not willing you should lumber up the record with a narrative purporting to recite where this collision was and how it took place and all about it. I am willing that the witness should refresh his memory and for you to question him concerning it, but it will have to be stipulated before hand that is the extent to which it will be incorporated in the record. There appears a whole lot of hearsay statements which have nothing to do with the

cross examination of this witness. If you want the so-called report of survey I am willing to let you have it. I am willing that the record shall show that counsel offers to let the witness have it or let counsel, if he desires, the report of the survey and the nature and extent of the injury to the vessel in all its details, but the customary historical resume which they sometimes get in, telling where the vessel came from and where she was going, and which could only have been obtained from somebody else, I decline to make a part of the record. Under this statement you can have it if you desire. It is in two separate documents and I will take off the forepart and let you have the part that relates to the survey, if you want it.

MR. MERRITT: I object to counsel producing a mutilated report of this survey, and I call upon counsel and the witness to produce the survey made by the witness at the time.

MR. BRONSON: We decline to produce two sheets of this document which purport to be a history of the course of the Indianapolis from the time she left Tacoma; it shows upon its face that it is simply a recital of things that have been told to the witness.

MR. MERRITT: I want the record to show that you have now the report of the survey which was made by this witness, and that your offer is to produce that report with the two sheets which are part of it taken off, and that you decline to produce it in the form in which it was made.

MR. BRONSON: Counsel states that he offers to produce to counsel for the libelant or to hand to the witness for his use on cross examination if he desires, all of the report which relates to anything this witness did or saw and the complete statement unmutilated with reference to all of the damage or anything that purports to be or relates to the damage to the Indianapolis, which is a statement signed by James Fowler and F. Walker. But that counsel declines to have made a part of this record a historical statement consisting of a page and four lines, which purport to start with the Indianapolis when she left the dock at Tacoma, and recites the various parts of her trip over to Seattle, and which appear to be based upon the statements made by other people.

MR. MERRITT: I desire to state that I cannot accept the offer of counsel for the reason that I have not had an opportunity to examine the paper to ascertain whether counsel's conclusions as to the effect or purport of the portions which he declines to have in the record, are correct or not, and now moves to strike out all of the evidence of the witness relating to any survey that he made of the vessel and any report of repairs necessary to the vessel or that were made on the vessel, for the reason he has stated he has no personal recollection thereof, and that he does not now produce in answer to the demand of the libelant the report which he made at the time.

Q. (Mr. Bronson). The bills which have been exhibited to you and included in Claimant's exhibit 13 for identification, and which I now offer in evidence, were bills examined by you subsequent to the time when you made any report or survey on the injury to the vessel, were they not?

A. Yes sir.

Paper marked Claimant's exhibit 13, filed and returned herewith.

Q. And were made at a time when your recollection was fresh with reference to the transactions?

A. Yes sir.

Q. And you were familiar with the details?

A. I was familiar with the details at the time, and I am familiar with them generally.

Q. And you are not familiar with the items now?

A. No sir.

Q. Do you know whether or not this damage to the stern of the Indianapolis was above or below the water line?

A. The damage in the stern was in one of the port doors.

Q. Was it necessary to dry dock her for that?

A. No sir.

Q. Now captain Walker, independent of any statement which you might have heard from anybody else, what is your opinion with reference to this question: Could the injury to the stem of the Indianapolis basing it merely on what you could see at the time, have been caused by her striking an object straight on?

A. No sir.

MR. MERRITT: I move to strike the answer because there is no evidence in the case at all that she struck straight on.

Q. Which way do the deck beams lie on a vessel like the Kitsap?

A. Lie athwartship.

Q. Calling your attention to Claimant's exhibit 12, this is a little sketch prepared by yourself?

A. Yes sir.

Q. Now will you add to that sketch by drawing on the figure marked Kitsap the course of her deck beams.

A. That will be the deck beams. This is where the damage was. And this here is the stringers and the short straight planks. The deck beams run athwartships.

Q. Counsel asked you whether or not the damage might have resulted from the motion of the Indianapolis. Suppose that the deck beams of the Kitsap struck the Indianapolis. Now, could the position of the Indianapolis, if she had been the moving object, have caused the damage as it was caused by the deck beams of the Kitsap, would it have tended to bend her stem to port instead of starboard?

A. No, it would tend to bend the stem to port, but the real part of the vessel that did the damage was the fore and afters, not the deck beams.

Q. If the Indianapolis had been the moving object, would she when she struck the Kitsap have had any movement to starboard, as distinguished from a straight-away course, would the very act of collision tend to force her stem or bow to the starboard, as distinguished from port, or would she go straight in?

A. The angle of the cut, judging from the angle of the collision, must have taken place at—had she been the moving vessel, there would have been considerable of the stem and plating thrown back, thrown aft.

Q. You mean stem and plating of the Indianapolis?

A. Yes.

Q. (Mr. Merritt). You think, Mr. Walker, that the resistance of the wooden vessel like the Kitsap, would have

a tendency to bend back the bow of an iron vessel like the Indianapolis?

A. Yes sir.

Q. You think it would made the difference, whether the Indianapolis were the moving object or the Kitsap, do you, whether or not that was bent or not?

A. In this case the angle of the cut and everything indicates the way of her going into the Kitsap. If she had been going in as you say these heavy planks and shear strakes would have put the stem aft. As it was, the blow was on the side and not aft.

Q. Whether the first blow was on the side or not?

A. The movement was sideways from starboard to port.

Q. The force, whatever forced the Indianapolis into the Kitsap or forced the Kitsap on to the Indianapolis, was from bow to stern of the Indianapolis?

A. Not the same, no sir.

Q. I say that was the force which made the cut in the Kitsap was from bow to stern of the Indianapolis, whatever caused that force?

A. No.

Q. Where did the force come?

A. The force that came in the Kitsap came in this direction and struck this vessel on that side of the bow.

Q. What force made the cut clear into the Kitsap?

A. The circular movement, that moving object at the time.

Q. It was not a straight cut?

A. It was not a straight movement.

Q. In your opinion it was a circular movement, and that was what caused the cut clear into the hull of the Kitsap?

A. The vessel had two movements. She was swinging with this circular movement, and when she struck the Indianapolis she was swinging she struck her on the starboard side—

Q. Just impaled her on there, that is your opinion?

A. Yes sir.

Q. And you think the construction of the Kitsap was

such that if the Indianapolis struck her instead of being struck, that the bow of the Indian would have been bent back?

A. It would have been differently damaged.

Q. It would have been bent back?

A. Yes sir.

Q. And yet you say that if the Indian was going at any considerable speed and struck the Kitsap she would cut her clear in two, is not that true? You say if the Indian had been going at any speed and struck the Kitsap she would have cut her clear in two?

A. Yes sir.

Q. Yet you think if she struck the Kitsap with a sufficient force to cut into her six to eight feet as she was cut in, it would have bent her bow back?

A. Certainly it would bend the bow back, shown signs of bending back.

Q. What did cause the damage and the bending was the fore and afters of the Kitsap?

A. The fore and aft parts of the other vessel did the damage.

Q. And right at the aft side of the cut is a heavy beam of the Kitsap, is there not?

A. Yes sir. She had to go two or three beams.

Q. She had to cut two or three beams, and then came up against the heavy beam?

A. The beams did not mean anything in this case.

Q. There was heavy beams?

A. And deck planking on top of the beams.

Q. And the Indianapolis was either carried against the beams on the starboard side, or the Kitsap carried these beams against the Indianapolis, on the starboard side of the Indianapolis?

A. What is the use of giving my opinion? The beams don't mean anything to me in this case.

Q. I am talking about beams and fore and afters together.

A. I know what did the damage, it was the fore and aft parts did the damage.

Q. Now I say the damage would have been caused

whether these fore and aft boards had been crowded against the starboard side of the Indianapolis or whether the starboard side of the Indianapolis was crowded against them?

A. It was not the same force. The force is very distinguishable to anybody who understands the law of physics on the subject.

Q. There is the force where the Indianapolis is crowded against these beams, is there not?

A. There is a force.

Q. And being the heavier body it is the greater force, is it not?

A. She was the resistance.

Q. I say being the heavier body that is the greater force?

A. I do not see that exactly.

Q. You could see where the Indianapolis struck the oil tank of the Kitsap?

A. That is only a tin affair.

Q. It was sufficiently strong so that it only made a very slight dent in it?

A. Made a slight dent in the tanks because the blow was spent by the time it got to the tank.

Q. The blow was quite spent by the time it cut through the heavy timbers and heavy boards and got there?

A. The tank means nothing.

Q. It does not take as much force to bend the bow of the Indianapolis from one side to the other as to bend it straight back, does it?

A. Depends on exactly how it hit and where it hit.

Q. I say it does not take as much force to bend sideways as it does to bend it back?

A. If she is between two stringers she will go easy. If she is not she will not go so easy.

Q. The point where it was bent was from the water line down?

A. That don't mean between two stringers, might be boards on the waterline, and might not be.

Q. How was it if you know?

A. I could not say.

Q. You have known iron vessels going into the dock or

into a large vessel on an almost square blow without the bow being bent back?

A. No, I don't think I have. I have seen a great number of collision cases too.

Q. And where they go square on into a dock or into a vessel has always bent the bow back?

A. Bent the bow, some buckled plating, showing the force was directly aft.

Q. And that shows in this case she did not go square in?

A. I have told you. I have given you my opinion time and time again.

Q. (Mr. Bronson). She might go clear through the Kitsap if she were the colliding vessel, and bend her stem, might she not?

A. Oh certainly. She could not go through her without doing some damage.

Q. To herself?

A. No.

(Testimony of witness closed).

SAMUEL THORN, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). You were engineer on the Indianapolis when she was in collision with the Kitsap?

A. Yes sir.

Q. Were you in charge of the engines?

A. Yes sir.

Q. Do you recollect some of the times from your record, made at the time, with reference to the course of the Indianapolis or operation of her engines I should say?

A. I could not recollect. The log book shows, I could not recollect.

Q. Where is the log, is it up in the Inspector's office?

A. I believe it is at the Inspectors.

Q. Do you remember what the condition of the weather was?

A. When I went on watch it was clear, but it was foggy in the bay, I believe.

Q. Do you remember whether or not the Indianapolis proceeded full speed, from the time she got on her course in Tacoma clear up until her ordinary stopping time in Seattle, or did she stop?

A. Oh we stopped.

Q. Now you go ahead and give as accurately as you can at the present time, what was done with the engines?

A. Before the collision?

Q. At any time before the collision.

A. As far as I can remember that we stopped at about what I supposed was the whistling buoy.

Q. The bell buoy you mean?

A. The bell buoy, rather, slowed down I think half speed slow if I remember right.

Q. Just give the course of the ship.

A. Then we proceeded full speed.

Q. For about how long?

A. About four minutes as near as I can recollect.

Q. Then what?

A. Then we got three back bells.

Q. What was the first one?

A. Got a slow half speed astern and then full speed astern.

Q. Do you remember the collision?

A. I remember striking something, yes.

Q. Do you recollect at this time, how long previous to the collision, these various bells occurred and what interval occurred between them.

A. At the time of the collision.

Q. Yes.

A. No.

Q. Do you remember how long before the collision you got your slow speed?

A. No.

Q. Stop and then slow speed?

A. No.

Q. You do not recollect that time?

A. No.

Q. Were these recited in the log at the time?

A. They were put in the log as near as I could recollect after the accident occurred.

Q. But they were not put down at the exact time?

A. No.

Q. Well, was it your custom on the Indianapolis to log bells of that kind?

A. No.

Q. At the time?

A. No, we log bells only when we are under way, when we are making landings we do not log the bells. In case of an accident like that, we would not have time to log the bells at all until the thing was over.

Q. Well, have you any recollection at the present time as to such a recollection as would enable you to testify as to the speed of the vessel or the approximate speed of the vessel?

A. At what time?

Q. At any time after you got your first stop bell. Do you know how long she went on a stop bell before the next bell?

A. I could not say.

Q. You do not know?

A. No.

Q. You testified before the Inspectors, didn't you?

A. Yes sir.

Q. Was the matter fresh in your recollection at that time?

A. Well, yes, it was at that time.

CROSS EXAMINATION:

Q. (Mr. Merritt). You said you stopped at the buoy, you do not mean that you stopped?

A. Slowed down.

Q. And then started up full speed and run about four minutes?

A. And run about four minutes.

Q. Then you got a bell to slow?

A. Yes sir.

Q. Then you got half speed astern?

A. Yes sir.

Q. Then full speed astern?

A. Yes.

Q. Just before you got full speed astern you felt the impact?

MR. BRONSON: I object, the witness has not testified to any such thing.

MR. MERRITT: I am examining him.

A. Yes sir.

Q. The log which you say you filled out after you got in, as near as you could recollect?

A. Yes sir.

Q. You did not look at the clock at the time.

A. Not until after the thing was over.

Q. (Mr. Bronson). Do you mean to testify to the exact time that you got the full speed astern?

A. No.

Q. You say just after. What do you mean, a minute or half a minute or two minutes?

A. I could not say a minute or half a minute or two minutes, not the exact time, I do not recollect.

Q. It was shortly after that time?

A. Yes sir.

Q. Shortly after full speed astern?

A. Yes sir.

Q. You got first the stop bell didn't you?

A. Stop, slow, half, full.

Q. You mean slow astern, half speed astern and full speed astern?

A. Yes sir.

Q. You could not tell whether a minute or half a minute or a few seconds?

A. I could not recollect now whether a minute or two minutes. I do not know exactly.

Q. Might have been a few seconds?

A. Possibly might have been.

(Testimony of witness closed.)

It is stipulated that the charter value of the Kitsap was \$175 a day, and the charter value of the Indianapolis \$400 a day.

That the net earnings, if it is a material way to determine the measure of damage, of the Kitsap was \$50 a day and the Indianapolis \$125 a day.

Now this stipulation as to the net earnings of either boat, is made without libelant consenting that that is a correct measure of damage to the libelant for the demurrage on the Kitsap, upon the ground that it is not the legal way to determine her damage on account of demurrage.

Hearing adjourned to be resumed by agreement.

Seattle, Washington, August 29, 1911.

Continuation of proceedings.

PRESENT: Mr. Merritt, for the libelant. Mr. Bronson, for the Claimant.

LIBELANT'S REBUTTAL.

L. M. STEWART, a witness called on behalf of the libelant, after being duly sworn, testified as follows:

Q. (Mr. Merritt). Your name is L. M. Stewart?

A. Yes sir.

Q. What is your business or occupation?

A. I am lieutenant in the United States Navy.

Q. Where are you located?

A. At the Navy Yard, Bremerton, Washington.

Q. Where were you located on December 14, 1910?

A. At the Navy Yard, Bremerton, Washington.

Q. Do you remember the day the Indianapolis and Kitsap were in collision?

A. Yes sir, on December 14th, 1910.

Q. Where were you at the time of the collision?

A. I was on the stern of the steamer Kennedy, which was lying at the Colman dock in the Seattle harbor.

Q. How long had you been on the stern of the Kennedy?

A. I had been there since I had gotten on board the Kennedy about 4:30.

Q. And how was the Kennedy lying at the Colman dock at that time?

A. She was lying on a sort of an angle, about southwest probably, their usual berth there.

Q. That is what is termed here, I suppose, the face of the dock?

A. Yes.

Q. The angling face of the dock as shown in the testimony here?

A. Yes.

Q. And how was her bow pointed?

A. Her bow was pointed inshore.

Q. Did you hear any of the whistles from the Indianapolis and Kitsap?

A. Yes, I heard the backing whistles of both steamers.

Q. Where were these whistles located? with reference to where you stood?

A. They were somewhere on the port quarter of the Kennedy.

Q. And about how far, in your opinion?

A. I would have said somewhere between four and five hundred yards.

Q. I will ask you to take this chart of the harbor front of Seattle, and mark on the chart the location of the Kennedy at that time, where you stood and about where you heard the whistles?

A. The Kennedy was lying here. She usually extends a little bit over the end of the Colman dock.

Q. Just mark "K" to indicate the Kennedy.

(Witness does so.)

Q. And where you stood?

A. About amidships on the main deck aft.

Q. Where you have marked the dot on the diagram?

A. Yes sir.

Q. Now draw a line from where you stood to the point where you first heard the sounds?

A. The line following along here, and the sounds I should judge were somewhere within that angle.

Q. Somewhere within the angle between the two lines that you have drawn from the stern of the Kennedy on this chart?

A. Yes sir.

Q. What was the leaving time of the Kennedy on that date?

A. 4:40.

Q. Did you see any vessel pass the Colman dock while you stood on the stern of the Kennedy?

A. No, I did not.

Q. And before you heard these whistles?

A. No, I did not.

Q. How was the fog that day?

A. The fog was very thick.

Q. Did any vessel come up to the Kennedy while you were there?

A. Yes, the steamer Telegraph came up.

Q. Where did she come up?

A. She came up on the starboard quarter of the Kennedy.

Q. Did you hear any orders given to her?

A. Yes, she was told to go out and see what was the matter with the Indianapolis.

Q. What did she do?

A. She turned around, apparently and went out in that direction.

Q. Did you know what these whistles were that you heard?

A. The usual backing signals.

CROSS EXAMINATION:

Q. (Mr. Bronson). What did you say your business is?

A. I am lieutenant in the Navy.

Q. What backing whistles did you hear?

A. I heard the three conventional whistles, required by the rules of the road, of steamers backing.

Q. You were on the stern of the Kennedy?

A. Yes sir.

Q. The immediate stern?

A. Yes sir.

Q. You have laid the Kennedy on this map on the slip as the slip is actually built on the ground?

A. Yes sir.

Q. What point of the compass would the stern of the Kennedy point to?

A. Well, I do not know; I do not know the direction of the dock; there is no compass on this chart.

Q. You have drawn a line immediately astern of the Kennedy?

A. Yes sir.

Q. And then up the water front, practically along the face of the dock?

A. Yes.

Q. These backing whistles that you speak of were between these two lines, you say?

A. Yes sir.

Q. And about how far away?

A. I should say between four and five hundred yards.

Q. You think you could in your experience, that you could in a fog place these whistles within the lines that you have drawn there with any degree of accuracy? Would you be willing to swear that they were within these lines?

A. Yes sir.

Q. And four or five hundred yards away?

A. Yes.

Q. Had you seen the Kitsap pass the dock?

A. No, I had not.

Q. How long had you been on the stern of the vessel?

A. About 10 minutes.

Q. What called your attention to the whistles?

A. The three backing whistles of each ship.

(Testimony of witness closed.)

MR. MERRITT: I offer this chart in evidence.

Chart marked libelant's exhibit "J," filed and returned herewith.

M. D. JACKSON, JR., a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). Where do you reside?

A. On Bainbridge island.

Q. What is your business?

A. Real estate business.

Q. What concern?

A. Jackson Realty & Loan company.

Q. Do you remember the day of the collision between the Kitsap and the Indianapolis?

A. I do.

Q. Were you on the steamer Reliance on the afternoon of the day of the collision?

A. I was.

Q. Do you know what time you were on there?

A. I got to the boat about between 20 and 25 minutes after—about 20 minutes after 4.

Q. Did you see the Kitsap?

A. When she came in.

Q. Did you see her when she left?

A. I saw her when she left.

Q. You may describe how she left—what pier were you lying at?

A. We were lying at the pier at the foot of Spring street, pier 4.

Q. That was the place where the Reliance docked?

A. Yes, regular dock.

Q. And where did the Kitsap lie when she came in?

A. She came in right across the bow of the Reliance, in the slip at the south of the dock.

Q. Describe how she pulled away from the dock.

A. She backed out and backed across the face of the dock and backing northward until she was nearly her full length back of the Reliance.

Q. Then how did she go?

A. Then she pulled southward in a curve southward and westward.

Q. When did the Reliance leave?

A. She left then almost simultaneously, as soon as the Kitsap was clear so that we could get out.

Q. How did the Reliance back out?

A. Well, she went forward, making a curve, pulling from the dock. She was lying with her bow south, and making a course following the course of the Kitsap.

Q. Where did you stand on the Reliance?

A. I stood on the port side, left hand side, just forward of the pilot house.

Q. Was there anything to obstruct your attention across the bow of the Reliance?

A. No sir.

Q. How did the Reliance proceed on her course.

A. She took what appeared to me to be her usual course pulling out from the dock and making a curve until we were about off the Galbraith dock.

Q. The Galbraith dock is what is known as pier 3?

A. Yes.

Q. That is the next dock south of pier 4?

A. Yes sir.

Q. Now what did you see of the Kitsap after you pulled away?

A. We followed the curve, or the turn of the Kitsap, with the Reliance, and kept on our course apparently, and the Kitsap, the last I saw of the Kitsap was her stern light.

Q. Going which way?

A. Going northward.

Q. She had made her complete turn?

A. She had made her complete turn.

Q. What angle was she running from the Reliance when you last saw her?

A. Well, she was running out direct right angles to her.

Q. Did the Kitsap ever go south of the Reliance?

A. No sir, she did not.

Q. Did you hear the danger whistles or any whistles?

A. I heard some whistles.

Q. Where were they with reference to where you stood?

A. They were on the port, directly from the pilot house, a little aft, and the sound came aft of where I stood.

Q. Now on exhibit "J" for identification there are certain courses marked on it. I will ask you to state whether or not the position of the vessel on the south side or third side of what is marked 4 on this chart, correctly represents where the Kitsap lay?

A. Yes sir.

Q. Where did the Reliance lie?

A. The Reliance lay right across the face of the dock.

Q. As shown by this straight line?

A. Yes sir.

Q. State whether or not the course marked out for the backing of the Kitsap and her turn on her course, is correctly represented?

A. Yes, just as I saw it.

Q. And how about the course as marked on this chart, of the Reliance?

A. As I remember it. It was right in about here where I heard the whistles. I should judge they were about at this point here, where I stood.

Q. Where you say "this point" that would be where the dotted lines of 115 and 120 feet cross the line marked course of Reliance?

A. Yes. I established that point from the fact that the pilot house had cut off my view entirely of where the Kitsap was, and where I stood as I remember the course of sound from the pilot house.

Q. How was the fog?

A. The fog was almost as heavy as I have ever seen here. I have known of one heavier one only.

Q. I will ask you whether it was raising and lowering or whether it was thick?

A. It was thick.

CROSS EXAMINATION:

Q. (Mr. Bronson). What did you say your business is?

A. Real estate business.

Q. Where were you standing on the Reliance?

A. On the port side, just forward of the pilot house.

Q. Were you looking at the compass?

A. No sir, I was not.

Q. Do you want the Court to understand that you knew the points of the compass in the fog with a vessel turning unless you are looking at the compass?

A. I would not ordinarily say that I did—

Q. Just answer the question yes or no.

A. It would depend entirely on the location I was in in the fog whether I knew my directions. If I were out—

Q. What I asked you was whether I understand you to testify to the Court that you knew the points of the compass out in that fog and the course that the vessel was steering without looking at the compass.

MR. MERRITT: I object. The witness has not testified that he knew the points of the compass.

MR. BRONSON: He testified what the course was and he identified the course on this map.

A. I have answered that question in the way that I say, that I can tell the points of the compass depending entirely where I am located. I would not be able to tell the points of the compass in the middle of the bay, but I would from the Seattle harbor.

Q. Well, do you mean to tell the Court that you knew, after you had started into this dense fog, at any time what course the vessel was steering?

A. I will tell the Court I knew what I thought was the course.

Q. Would you undertake to say that you could tell when she was going north, after she had turned on her course there?

A. No, I would not.

Q. Or west?

A. That would depend on how far I was from the harbor.

Q. I am speaking of the actual conditions that did exist, not on any problematical conditions. Did you know when she was going west?

A. To the distance I have testified I did, yes.

Q. So you would not need a compass to turn a vessel around in the bay in a fog, you could turn around and head west or north without a compass?

A. Depending on where I was.

Q. Well, could you see the docks after you got out in the harbor? How long could you see the docks?

A. About two or three minutes.

Q. About two or three minutes after you started on your course you could see the docks?

A. About that, not any more than that.

Q. And then she turned and began to swing?

A. She was swinging all the time.

Q. But you could see for two or three minutes as a matter of fact. Do you want the Court to understand that these lines that are drawn on this map here indicate the course of that vessel to your positive knowledge, or do you simply assume that is the course they steered?

A. If I had been asked to draw these lines on there from what I saw of that vessel that night I would have put them that way.

Q. Did you ever see these lines before?

A. About fifteen minutes ago, yes.

Q. Do you know who drew them?

A. I do not.

Q. Do you know how far out, for instance at the point marked "collision," do you know how far out that is from the dock?

A. I do not.

Q. You have no idea, have you?

A. I have not looked at it with any idea of finding out what that map shows to be the point of collision.

Q. Then as a matter of fact, Mr. Witness, your evidence is not to the effect that the Kitsap steered this particular course, but she steered a course on a curve, that is all is it not? You do not know how far out she went before she was headed north?

A. No, not exactly.

Q. You did not look at the compass to see whether she was headed north?

A. No, I did not.

Q. Is it not a fact you are assuming that she steered that course, because you have been given to understand this is the course she ordinarily steers?

A. No sir, it is not.

Q. How long was it after she left the dock until the collision?

A. Approximately five or six minutes.

Q. Were you on the starboard side of the Reliance all the while?

A. I was not on the starboard side at all, I was on the port side—I was on the left hand side. I am not very familiar with nautical terms.

Q. Did not you say that the pilot house interfered with your hearing the sound?

A. I did.

Q. Was not the Kitsap on the port side of the Reliance?

A. The port side is the left hand side, is it?

Q. Yes.

A. The Kitsap was on the right hand side, the starboard side.

Q. And you were on the port side of the pilot house?

A. I was forward of the pilot house.

Q. Where was the Reliance bound?

A. For Colby, Harper, Manchester and around to Bainbridge Island.

Q. Were you a regular passenger on there?

A. I am.

Q. How far away from the Kitsap was the Reliance until they began to diverge?

A. About 300 feet, something like that.

Q. Could you see the Kitsap all that while?

A. I saw the lights.

Q. About 300 feet?

A. The distance in a fog is very hard to determine.

Q. Did the Reliance leave her dock before or after the Kitsap went ahead?

A. The Reliance and the Kitsap were on their forward course going forward approximately the same time. The time the Kitsap started forward after backing up was about the same time as we pulled out going forward.

Q. Did she back up and then go ahead?

A. Which vessel?

Q. The Reliance?

A. No, she did not.

Q. Cleared right away from the dock?

A. Cleared right away from the dock.

Q. Did you see the Kitsap when she started to go ahead?

A. I saw the bow of the Kitsap, yes.

Q. When she started to go ahead?

A. You are getting at the point how far back she was—

Q. Just answer the question. I asked you if you saw the Kitsap when she started to go ahead?

A. I did.

Q. Then she must have been ahead of the Reliance.

A. Ahead of the Reliance.

Q. You were on the port side you say, of the pilot house of the Reliance?

A. Forward of the Reliance.

Q. How did you happen to be watching the Kitsap?

A. Oh, I do not know that I have any special reason.

Q. You must have from your evidence, you must have been giving her very particular attention.

A. I was, yes, in a sense.

Q. Why?

A. She had had an accident; she had come in from an accident and she is rather a pretty vessel as she pulls out, and the lights were all lighted, and rather a pretty sight, and I am not averse to watching a sight of that kind.

Q. That was your only reason for doing so?

A. That is the only reason for my doing so that I know of specially.

Q. Then you ran down parallel with each other, is that the idea?

A. Yes sir.

Q. Was the Reliance sounding any signals?

A. Almost continuously.

Q. And the Kitsap also?

A. Yes, she was.

REDIRECT EXAMINATION:

Q. (Mr. Merritt). How long have you been riding on the Reliance?

A. At that time about eight months.

Q. You are familiar with her course in pulling away from pier 4?

A. I am.

Q. Seen it and noticed it in clear weather?

A. Noticed it in clear weather and in light fogs.

Q. Did you notice any difference in her course on that day and the ordinary course?

A. I did not.

Q. Do the courses indicated on exhibit "J" for identification indicate, in your opinion, the ordinary course of the Reliance in leaving pier 4?

MR. BRONSON: I object as incompetent, irrelevant and immaterial what her ordinary course is.

A. It does.

Q. You did not notice any difference in her leaving and backing out this time and turning than ordinarily?

A. Not a bit.

Q. (Mr. Bronson). That is what you base your evidence on, is it not, that she steered the same course this day as you supposed she steered any other day, that is the reason you identify that course?

A. That is the reason I identify this map, I base that portion of the evidence largely on that.

Q. You do not know what the radius of that circle, which would be completed by bringing that line back to the starting point would be, or the diameter, rather?

A. No, I would have no way of knowing that.

(Testimony of witness closed).

C. C. KURIN, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). Where do you reside?

A. 9802 Sixtieth avenue south.

Q. What is your business?

A. Wharfinger pier 4.

Q. Where were you on December 14th, 1910, the day of the collision between the Kitsap and the Indianapolis?

A. At my duties on pier 4.

Q. Do you remember the collision?

A. I do.

Q. Where were you at the time of the collision?

A. I was at the face of the dock, as near to the center of the dock as you could get, probably.

Q. You speak about the face, you mean the outer end?

A. Yes, the water end of the dock.

Q. Did you hear the collision or anything connected with the collision?

A. I heard the Indian give four whistles for help.

Q. Did you know the Indian's whistle?

A. I knew the Indian's whistle.

Q. Did you hear any other whistles?

A. Why, not that I would be certain of. I heard lots of other whistles, but the four whistles drew my attention to a collision out there, that is a danger, wanting help.

Q. How long have you been wharfinger?

A. I have only been on pier 4 since the 1st day of October.

Q. And how long have you worked around the water front?

A. Been wharfinger on pier 6, six years prior to that.

Q. Do you know the Indian's whistle when you hear it?

A. Yes sir.

Q. Do you know whether these were the Indian's whistles?

A. Yes, it was her fog whistle; that is not the whistle she blows at the present time.

Q. You are familiar with her fog whistle too?

A. Yes sir.

Q. What direction, with reference to where you stood, were these whistles?

A. Well, they were west, as far as I could tell.

Q. In what direction would that be from where you stood, straight ahead, to your right or to your left?

A. To my right.

Q. Facing straight out from the dock?

A. Facing straight out from the dock the sound would come from my right.

Q. Can you give the approximate distance away?

A. I judged it was somewhere between pier 6 and pier 7 where the sound came from, off in that direction.

Q. About how far out in the bay, could you tell that?

A. No, I could not. It did not seem to be very far.

Q. You said to the west. How does the pier face there, taking the points of the compass?

A. I know the points of the compass but I could not just say how pier 4 faces.

Q. When you say to the west you mean out from the dock, that is out into the bay from the dock?

A. Yes sir.

Q. You heard this to your right, as you faced straight out from the dock?

A. Yes sir.

Q. Just take a sheet of paper and draw the face of the dock where you stood, and which direction it would be from where you stood?

A. (Witness does so). I stood probably right there.

Q. Which direction would it be from where you stood?

A. The sound came from this direction.

Q. Just mark this pier 4.

(Witness does so).

Q. Now the dot at the end of pier 4 on this diagram is where you stood?

A. Yes sir.

Q. And the line you have drawn from that to the right is to indicate the direction from which this sound came of these whistles?

A. Yes sir.

CROSS EXAMINATION:

Q. (Mr. Bronson). Did you hear any other whistles?

A. Yes, I heard quite a few other whistles

Q. Did you hear the Kitsap?

A. I did, while she was leaving the dock.

Q. Did you hear her whistle when she was in imminent danger of collision with the Indianapolis?

A. No, I could not say that I did.

(Testimony of witness closed).

MR. MERRITT: I offer this diagram drawn by the witness in evidence.

Diagram marked libelant's exhibit "K," filed and returned herewith.

F. L. EVANS, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). What is your name?

A. F. L. Evans.

Q. What is your business?

A. Wharfinger, pier 6.

Q. And you reside where?

A. 3019 Mansell avenue, Seattle.

Q. Were you the wharfinger on pier 6 on December 14, 1910?

A. Yes sir.

Q. Do you remember the day of the collision between the Indianapolis and Kitsap?

A. Yes sir.

Q. Do you remember the time of the collision?

A. Yes sir.

Q. Where were you at the time of the collision?

A. On the face of the dock, about the center.

Q. About what time was it?

A. Somewheres before 4:30, or around 4:30.

Q. What did you hear at that time?

A. I heard several whistles and then a crash.

Q. You heard the crash?

A. Yes sir.

Q. What kind of a crash, describe the crash?

A. Well, I heard the whistles, I could not say to the number. They attracted my attention and then I heard the crash and the falling of glass and people screaming.

Q. What direction from where you stood was this crash and these whistles?

A. At an angle south or west.

Q. An angle south or west from where you stood?

A. Yes.

Q. Will you just draw on a piece of paper a diagram of the dock and where you stood and the direction from where you stood?

(Witness does so).

Q. Mark the diagram pier 6, and put a cross on the end of the pier indicating where you stood.

(Witness does so).

A. That is about where I stood.

Q. And the dotted line drawn from that is to indicate the direction of this crash?

A. Yes sir.

Q. About how far away, would you judge was the crash?

A. Somewheres in the neighborhood of between six and eight hundred feet.

Q. Are you familiar with the whistles of the Indian and the Kitsap?

A. I was not at the time, I had not paid any particular attention to the whistles. But I heard blasts that I supposed was the Indianapolis.

Q. Did you hear anything else after that?

A. Oh, I heard sounds as if boats were being lowered, some kind of a splash.

CROSS EXAMINATION:

Q. (Mr. Bronson). What is your business on the dock?

A. Wharfinger.

Q. The dotted line on this exhibit "L" indicates the direction of the sound as it came to you, is that it?

A. Yes sir.

Q. Of the crash of the collision or whistles or what?

A. The collision and the whistles were almost simultaneously. There were not very far apart.

Q. They all came from the same direction?

A. Yes sir.

(Testimony of witness closed).

MR. MERRITT: I offer this diagram drawn by the witness in evidence.

Paper marked libelant's exhibit "L," filed and returned herewith.

CAPT. A. J. WOOD, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). You are master of the West Seattle Ferry?

A. Yes sir.

Q. And you were on December 14th 1910?

A. Yes sir.

Q. Did you keep a log of the trips of the Ferry on that day?

A. As to the condition of the weather, that is all.

Q. Have you that log?

A. Yes sir.

Q. Refer to that log, captain, for December 14th, 1910. In the afternoon what time did the ferry leave west Seattle after 4 o'clock on December 14th?

A. Left there at 5:05.

Q. What time previous to that?

A. 4:05.

Q. Now were these entries in this log made at that time?

A. Yes. That is only the condition of the weather at the time, is all.

Q. Do they truly record the condition of the weather as it was at that time?

A. Yes sir.

Q. You may state from your log, what the condition of the weather in the harbor was between 4:05 and 5:05 on December 14th, 1910?

A. 4 p. m. fog thick as mud on the west side. 4:20 p. m. could not see Colman nor Grand Trunk, nor slip, as came in at this side.

Q. What else?

A. Thickest I ever saw in the harbor. 4:40 p. m. Indianapolis sunk steamer Kitsap. No lives lost.

MR. BRONSON: We move to strike out, and object to all entries in this log except as establishing the condition of the weather. It is not shown that who ever wrote this log knew about the transactions.

MR. MERRITT: I have no objection to that.

A. 6:05 p. m. still thick. This was the last trip.

Q. I will ask you whether the fog during this time, be-

tween 4 and 5 o'clock on that day was rising and lowering or whether it was thick?

A. I did not see it rise or lower any; it was very thick between four and five o'clock.

CROSS EXAMINATION:

Q. (Mr. Bronson). Does your experience lead you to think that the fog all over the bay would be just the same as in any one spot?

A. No, fog is often thick in patches.

Q. It will be thick in one place and thin in another?

A. And thicker in another.

Q. And moving backwards and forwards?

A. Yes, shifting.

REDIRECT EXAMINATION.

Q. (Mr. Merritt). What time did you leave Seattle for West Seattle?

A. What trip?

Q. On that afternoon after 4 o'clock?

A. After 4 o'clock 4:30.

Q. And went back to West Seattle?

A. Yes.

Q. How was the fog on that trip back?

A. Very thick all the way across.

Q. And it had been the same on your trip over at 4 o'clock?

A. Yes, and thick coming back.

Q. (Mr. Bronson). Captain, is it not a fact that the fog in the bay is thicker, as a rule, than it is anywhere else?

A. Yes sir, it is.

Q. South of Duwamish Head it will be thicker than north of Duwamish Head?

A. Yes sir.

Q. It is always dense in the head of the bay?

A. Always dense in the head of the bay and along the shore, on the lee shore.

Q. (Mr. Merritt). Your course has been always from West Seattle Ferry dock to the Ferry dock at Seattle?

A. Yes, one straight course.

Q. And about how far south from the course of the Indianapolis from Duwamish Head to Colman dock?

A. I could not tell you exactly.

Q. So far as you know there is no appreciable difference between the fog in your course and the course of a vessel from Duwamish Head to the Colman dock?

A. No, I should not think so.

Q. (Mr. Bronson). The Indianapolis, however, would be coming in at a point probably half a mile north of the Ferry slip when she turns the buoy, would she not?

A. Just about half a mile.

Q. She would be wholly outside of the Head at that time?

A. She is outside of the bell buoy.

Q. When you say her course would be the same, it would be the same on this side?

A. Yes, we come together on this side.

Q. (Mr. Merritt). You come together and she crosses your course to get to the Colman dock?

A. Yes sir.

(Testimony of witness closed).

RICHARD WARD, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). Mr. Ward, you are an officer of the Elliott Bay Dry Dock company?

A. Yes sir.

Q. What is your position?

A. I am dock master. I superintend the work.

Q. You were superintendent of the raising of the Kitsap?

A. Yes sir.

Q. I will ask you in what direction the bow of the Kitsap was pointed when she was found in the bay?

A. She was lying towards the East Waterway, the bow; could not tell within a point or so.

CROSS EXAMINATION:

Q. (Mr. Bronson). You do not mean that you went down there to see her?

A. No sir, I was not down there to see her; the only evidence I could see was by my wires.

Q. You got wires under the vessel, is that it?

A. Yes sir.

Q. You would not like to swear just what direction she was pointing, would you, from the evidence that you had?

A. Well, of course my evidence is by the wires as they go around the vessel, and by sounding her.

Q. It would not be very accurate?

A. Well, no.

REDIRECT EXAMINATION:

Q. (Mr. Merritt). You did sound her?

A. I did sound her.

Q. Do you know whether her bow was southward or northward to get her on your dry dock?

A. Well, we can tell by the location of the wires, which wire we put first. I put the first wire under the bow.

Q. Could you tell by sounding whether it was bow or stern?

A. I would not like to swear on the soundings, only by my wires as we raised her.

Q. You took these wires off after she came up?

A. Yes sir.

Q. So that you would know which of these wires were under her bow?

A. Yes, I could tell.

Q. And you could tell from that which way her bow was pointed?

A. Yes sir.

Q. (Mr. Bronson). Did you have considerable trouble getting her up the first time?

A. The first time?

Q. When you lifted her, did you run against some obstruction or other?

A. No sir, the first lift we broke one cable. We still re-

tained that cable there, and we raised that forward end and we swept the other cable underneath.

(Testimony of witness closed).

J. L. SHAW, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). What is your business?

A. Rancher.

Q. Where do you reside?

A. Colby, Kitsap county.

Q. How long have you resided there?

A. I have resided there since 1893.

Q. How long have you been around the Sound?

A. I came to the Sound in 1882.

Q. Have you ever sailed on the Sound?

A. Yes sir.

Q. How and on what?

A. I have sailed schooner, sloop and also gasoline launch and steamboat.

Q. Were you a passenger on the Reliance on December 14th 1910, the day of the collision between the Indianapolis and the Kitsap?

A. Yes sir.

Q. Did you see the Kitsap when she was lying on the south side of pier 4, the afternoon of that day?

A. Yes sir.

Q. Where was the Reliance at that time?

A. The Reliance was lying on the face of the dock.

Q. Did you see the Kitsap leave?

A. Yes sir.

Q. Do you know about what time it was?

A. No sir, I could not swear to the exact time. I came in on the interurban train from Tacoma and ran from that train right down to the boat.

Q. About what time was it?

A. Well, it was in the evening, getting dark, the lights were lit.

Q. It was after four o'clock?

A. Yes sir.

Q. Now did you see the Kitsap leave the dock?

A. Yes sir.

Q. Just describe how she left the dock?

A. Well, she laid right straight across our bow, and she backed out and backed right down alongside of us until her bow was down astern of me and I was standing on the star-board side of the stern quarter of the Reliance, and she backed down and came ahead, got her bells and came ahead. As she came up abreast of us she commenced to bear off towards the bell buoy, south south west. As she did, we had already thrown our lines off and was just drifting away from the dock when the captain gave his go-ahead bell and he circled right after him.

Q. Which boat do you mean?

A. The Reliance. He circled right after her and then for a few turns of the wheel and then stopped, but the Kitsap kept going on and turning until she came on around. Then we went ahead again for perhaps a minute. By that time the Kitsap had come around until she was just—her range light was just about amidship of us, her stern high light. And then we went ahead again for perhaps three quarters of a minute or a minute and stopped, and just as we stopped, why we heard the whistles.

Q. What whistles?

A. Well, we heard a combination of whistles, three and four and then some launch kept repeating four.

Q. Where were these whistles with reference to where you stood?

A. I should judge they would be perhaps five or six hundred feet or may be eight hundred feet north of us, just north of us, a little abaft amidships.

Q. Did you hear any voice or anything besides the whistles?

A. Yes sir.

Q. What did you hear?

A. I heard Henry Hanson say "For God's sake throw that rope."

Q. Who do you mean by Henry Hanson?

A. He was captain of the Kitsap at that time.

Q. Did you know his voice?

A. Yes, I am very familiar with his voice. I had him when a small young boy, with his father stood at the wheel with him, and I have known him ever since he started into steamboating. I was perfectly familiar with his voice. I said "That is Henry" I says "My God, they have hit something."

Q. How long had you been riding on the Reliance?

A. Well sir, I could not state that. I have rode on her sometimes twice or three times a week.

Q. For how long?

A. From that to three or four times a week ever since she has been on the run.

Q. Is that a year or more?

A. Yes sir.

Q. Are you familiar with her course leaving pier 4 to go on this Colby-Manchester run?

A. Yes sir.

Q. Do you know what her course is after she leaves the pier?

A. Well, no, not exactly, but it is around south southwest to the bell buoy, I think.

Q. Did you notice at this time how far south she went?

A. Well, she seemed to go, he seemed to drift around as he let go of the dock, let go the head lines, he drifted away from the dock, so it seemed to me, as though he was afraid of going south.

Q. Did you see any part of any of the docks?

A. Yes sir.

Q. What?

A. Mr. Johnson was standing alongside of me as we drifted around, as we stopped that first time, we came around so that our range stern jack staff was standing right on a line with the fire boat.

Q. The fire boat between the Grand Trunk—

A. We could see the fire boat then on our first stop as we just drifted like away from the dock. I said to Johnson I said, well he is all right, he has got his course, because you see where that ball is right on the fire boat I says that is a

direct line for the bell buoy, so he will pick up the bell buoy.

Q. The fire boat was then lying at the city dock?

A. Yes sir.

Q. That is between pier 3 and the Grand Trunk?

A. Yes sir.

Q. And you were headed directly away from it?

A. Yes.

Q. And where was the Kitsap then, with reference to where you were?

A. She was just ahead of us making a circle as she came around in here, we followed her out there, and as we got right abreast of her we could just see her stern high light, and the whistle started to blow.

Q. Was the Kitsap ever south of the Reliance?

A. No, no, she could not get south of us and be going the other way.

Q. Well, you saw her all the time?

A. Oh yes.

Q. And you know whether she was south?

A. Yes, I stood there watching her.

Q. Was she south of you at all?

A. No sir, she was not.

Q. Now, calling your attention to libelant's exhibit "J" for identification, I will ask you to look at the position marked on the chart of the outline of a vessel lying to the south of pier 4, and I will ask you whether or not that shows where the Kitsap lay at that time?

A. Yes sir.

Q. And the Reliance lay as shown by the mark right across the face of pier 4?

A. The Kitsap laid in here.

Q. Where this is?

A. And the Reliance laid there.

Q. When you say "here" you mean where the outline of a vessel lies on the south side of pier 4?

A. Yes sir.

Q. And the Reliance lay right across the end of it?

A. Yes sir.

Q. I will ask you whether or not the course, as shown on

this chart of the Kitsap and of the Reliance, represent the courses which the two vessels steered at this time, to the best of your recollection?

A. These lines are the courses?

Q. Yes.

A. Yes, that is very near right. That is as near as you could get it, with the exception I think she came closer in back toward the dock as she left it.

Q. You mean the Kitsap?

A. Yes sir.

Q. In your opinion her line would be closer to the dock than indicated on this chart?

A. Yes. You see right about in here was where we heard the collision, then at the same time her range light showed her coming more in toward the dock than that.

Q. When you say "here," the record will not show what you mean. When you say "here" you mean to indicate where the line showing 100 feet crosses the line marked on this exhibit as the course of the Reliance?

A. Yes sir.

Q. Then you heard the collision just about abeam of you on the starboard side?

A. Yes.

Q. Is that what you mean?

A. Yes. You have got it exactly right, that is about where I should judge it was, between eight hundred and a thousand feet from shore at the time.

Q. How was the fog at the time?

A. It was very heavy, very heavy. We were commenting on the fog rolling at the time, rolling on the water. It was down, we had to look down like this (showing) to distinguish the hull of the Kitsap as she would be going by, and we could see through the fog, seeing the hull, very faint light.

CROSS EXAMINATION:

Q. (Mr. Bronson). Now I understand you to say that when the Reliance got down opposite the city dock you could see the light of the fire boat?

A. Yes sir.

Q. You were in line with the fire boat?

A. Yes sir.

Q. Headed away from it?

A. Yes, that was on the first stop.

Q. Then what did you do next after that stop?

A. Well, she rang a go-ahead bell and started and run for perhaps three quarters of a minute, between that and a minute.

Q. On what course?

A. On the same course.

Q. What was that?

A. I should judge it would be toward the bell buoy, south southwest.

Q. Heading from—

A. From the fire boat.

Q. To the bell buoy?

A. Yes sir.

Q. Will you mark the fire boat landing on this chart, it is right here is it not?

A. No, I should judge it is right in there. (Showing).

Q. What dock would that be?

A. That is at the foot of Madison street, I suppose.

Q. Mark the point with a cross?

(Witness does so).

Q. Now, what you are testifying to is relative to the foot of Madison street, is it not?

A. Yes sir.

Q. And that was where you were, at the foot of Madison street at the fire boat landing?

A. Yes sir.

Q. When you said to this man he has got her course headed toward the bell buoy?

A. Yes, but we were probably 150 or 200 feet out from the dock.

Q. Straight out from that on the line between the fire boat and the bell buoy?

A. Yes sir.

Q. Now you do not pretend, do you, to know the points of the compass in a fog, without a compass to look at?

A. No sir.

Q. You have had enough sea experience to know that you could not do that?

A. Yes sir.

Q. All that anybody could do toward outlining a course like this in a fog would be to approximate it, along the line of a previously steered course, which is supposed to be the same thing?

A. Yes sir.

Q. You said you heard Henry Hanson's voice?

A. Yes sir.

Q. And was that at right angles to your boat at the time you first stopped or when you subsequently stopped?

A. Second stop.

Q. Could you see the docks when you stopped a second time?

A. No sir.

Q. You were out in the bay?

A. Yes sir.

Q. About how long do you suppose you stopped the first time?

A. I should judge we stopped perhaps a minute.

Q. How long the second time?

A. Well, oh well, I do not suppose the first time we stopped over half a minute.

Q. And a minute the second time?

A. Yes I should judge we laid about a minute the second time.

Q. What was the reason for stopping?

A. Well, there were whistles blowing ahead.

Q. You said that a launch was blowing four whistles?

A. This was after she stopped.

Q. You heard the launch blow four whistles?

A. Yes sir.

Q. Did you hear the Kitsap whistle?

A. Yes sir.

Q. She whistled three whistles?

A. I would not say whether three or four that the Kitsap blew, but the Indianapolis blew four whistles.

Q. How far could you see in the fog?

A. That is a question how far we could see.

Q. Of course I understand. I just ask your judgment?

A. My judgment would be that we could see that range light, we could distinguish that light for five hundred feet. The fog seemed to be very low and very heavy rolling on the water.

Q. Do you think you could hear Henry Hanson's voice a thousand feet in a fog?

A. Yes sir.

Q. You do?

A. Yes sir.

Q. And when you heard this racket off apparently at right angles to you, you then could not see the docks, could you?

A. No.

Q. And you did not look at the compass?

A. No.

Q. And that was after you had stopped the second time?

A. Yes sir.

Q. Did you know what the master of the Reliance did with his helm when he stopped?

A. No sir.

Q. Was he going slowly?

A. Yes sir.

Q. Was he sounding a fog signal?

A. Yes sir.

Q. You have known Henry Hanson a long while?

A. Yes sir.

Q. Do you feel very friendly to him?

A. Well, nothing particular in my friendship for him, no more than I have known him for quite a long while.

Q. You feel friendly toward him?

A. Oh yes.

Q. Did you know at that time that they had sunk a launch previously that day?

A. I heard so at that time.

REDIRECT EXAMINATION:

Q. (Mr. Merritt). You stated that the fire boat was at the foot of Madison street?

A. Yes sir.

Q. That is what is known as the City Slip?

A. Yes sir.

Q. And you have marked on this chart as the position of the fire boat a point at the foot of Spring street. I will ask you to look at the chart and see whether you want to correct that testimony?

A. I certainly do. I cannot see very good.

MR. BRONSON: I was not making any point on that. His testimony fixed the point at the foot of Madison street.

A. I supposed this was Madison street. (Witness corrects point marked on chart).

Q. Between pier 4 and the City slip is pier 3, the Galbraith Bacon dock?

A. Yes sir.

Q. And then a small dock and the City slip and then the Grand Trunk dock?

A. Yes. I have been sailing out from there for six years.

Q. From the city slip?

A. Yes. Had one of the first permissions from the Council here to land freight there when it was made a City slip.

Q. The place you have now marked on the chart is the place where you mean the fire boat was?

A. Yes. We were directly over here.

Q. (Mr. Bronson). You do not know what scale of this map is, do you?

A. No sir, I do not.

Q. You have not any idea what the diameter of this partial circle would be?

A. No, I have not. I was just looking at that.

Q. You have no idea how far it would be from the end of the dock out to the point marked "Point of Collision?"

A. No. I did not notice that that was marked "Point of Collision."

Q. I say you have no idea how far that is all I asked you, whether or not you know what that distance is?

A. No, I do not.

Q. You have no idea?

A. I simply took the position of the two ships, as we were departing from one another.

Q. In other words, they represent the curved lines which you supposed they were taking?

A. Yes sir.

(Testimony of witness closed).

CHARLES WALLACE, a witness called on behalf of the libellant, being duly sworn, testified as follows:

Q. (Mr. Merritt). Where do you reside?

A. 514 Fairview avenue.

Q. You are captain of the Reliance?

A. Now?

Q. Yes?

A. No sir, Kitsap.

Q. You are Captain of the Kitsap? Were you an officer of the Reliance on December 14th, 1910?

A. Yes sir.

Q. What officer?

A. I was mate of her.

Q. Who was the captain at that time?

A. Captain Anderson.

Q. Do you know where he is now?

A. No, not exactly. He is not working for this company.

Q. You do not know what he is doing?

A. I heard he was on the Whatcom. I do not know. I have not seen him for a long time.

Q. You remember when the Kitsap came into pier 4 while the Reliance lay there the afternoon of December 14th?

A. Yes sir.

Q. Where was the Reliance lying at that time?

A. At the freight landing, face of the dock.

Q. Where did the Kitsap come in?

A. When she came back?

Q. Yes.

A. She came across the Reliance's bow, south side of the dock.

Q. Do you know when the Kitsap left?

A. After she came in? It was in the neighborhood of 4:30, a little bit after.

Q. How did she back away, how did she leave the dock?

A. Starboard helm, backed around to port.

Q. About how far?

A. About off pier 5 I think.

Q. Then what did she do?

A. Then she came ahead on her—

Q. And how did she come ahead?

A. She was swinging.

Q. Which way?

A. Swinging to the starboard.

Q. That is out into the bay?

A. Yes sir.

Q. What did the Reliance do?

A. We left the same pier at the same time.

Q. At what same time?

A. The Kitsap was steaming ahead when we left.

Q. How did the Reliance leave?

A. We gave a short kick back and then we steamed ahead.

Q. How did she turn away from the pier?

A. The Reliance?

Q. Yes.

A. She turned on a port helm, swinging to starboard.

Q. Did you see the Kitsap during this time when you were leaving?

A. Yes sir.

Q. Where was she during that time?

A. While we were leaving?

Q. Yes.

A. She was abreast of us.

Q. Which side?

A. On our starboard side.

Q. Did she ever go on your port side?

A. No sir, she never was.

Q. Just describe what course the Kitsap took until you lost sight of her?

A. Well, when we swung on a port helm until we make our course for the bell buoy, then we steadied her up and he kept on swinging away from us. We lost sight of him but heard his whistles.

Q. How was he heading when you lost sight of him?

A. He was headed on his course or that neighborhood, down towards Four mile rock.

Q. And what course did you take?

A. We steered for the bell buoy at West Seattle.

Q. How long had you been on the Reliance at that time?

A. Well, I went captain of the Reliance about in the neighborhood of the middle of May and I was captain of her until we got our steamer schedule the first of October, but I think I was captain until about the middle of October, then they cut one boat down and they put me mate of her from then on. I think I was on her continuously from the middle of May.

Q. Was she leaving from pier 4 all this time?

A. Yes sir.

Q. What was her ordinary course leaving pier 4, the Reliance?

A. The course is the neighborhood of south west by west to the bell buoy.

Q. With reference to the docks here, how far south did she go in turning on this course?

A. When we make that swing, we make that same swing from day to day, and when we get on our course, she passes the Grand Trunk dock on our quarter.

Q. Now did you make any different swing this time, than you do ordinarily?

A. No sir, we made the same swing by the Grand Trunk dock.

Q. You saw the Grand Trunk dock?

A. Yes sir.

Q. Do you know whether the Reliance was ever south of the Grand Trunk dock?

A. I know that she never was.

Q. And was the Kitsap ever south of the Reliance, or south of her course?

A. No sir, the Kitsap was on our starboard all the time.

Q. Did you hear any of the whistles of the Indianapolis or Kitsap?

A. When they were close together?

Q. Yes.

A. I heard a jumble of whistles.

Q. Did you hear voices or anything?

A. No sir.

Q. What direction were these whistles from you?

A. They were a little abaft our beam on the starboard side.

Q. Calling your attention to libelant's exhibit "J" for identification, and the courses marked there of the Kitsap and the Reliance, I will ask you to state whether or not these courses show approximately the correct courses taken by the two vessels at this time?

A. Yes sir, I think they do.

Q. The outline of a vessel lying at the south side of pier four shown on this chart, shows the position of the Kitsap as she laid at the dock?

A. Yes sir.

Q. And the lines backing out around from there and then coming ahead shows the course you described?

A. Yes sir.

Q. And the Reliance lay right across the end of the dock there?

A. Yes sir.

Q. And took the course described?

A. Yes sir.

Q. When you saw the Grand Trunk dock, how was the Reliance headed then? When you last saw the Grand Trunk dock?

A. I did not look astern of us but I saw the dock.

Q. How far had you swung on your course then?

A. Well, I was not in the pilot house, I was on the lookout.

Q. Could you tell when you had turned on to your course, stopped swinging?

A. My own judgment would tell me, going in and out of there so much.

Q. In your opinion how far had you turned on to your course?

A. When I last saw the Grand Trunk dock?

Q. Yes sir.

A. I do not think I looked at the Grand Trunk dock after we had it abreast of us. I am sure I did not.

Q. What was the condition of the fog at this time?

A. The fog was very thick.

Q. How was it all the way across the bay to the bell buoy?

A. It was thick all the way.

Q. And raising or lowering?

A. No, there was no raising or lowering to it at all.

CROSS EXAMINATION:

Q. (Mr. Bronson). How far could you see in the fog?

A. You mean to distinguish an object?

Q. Yes.

A. I do not think you could distinguish an object more than 200 feet.

Q. Then when you passed the Grand Trunk dock you were about 200 feet from it, is that right?

A. I do not know exactly how far we were from it. I did not say the Grand Trunk dock was the limit of my vision in the fog.

Q. Then you think you were closer than 200 feet to it?

A. I would not say positively.

Q. What is your best opinion?

A. I think we were a little closer than 200 feet.

Q. You think you were closer than 200 feet to the Grand Trunk dock? You saw it when it was abeam; the last time you saw it it was abeam?

A. Very near, I should judge.

Q. Did you stop the Reliance twice?

A. I was not in the pilot house.

Q. Was she stopped twice?

A. I could not say positively whether she stopped twice or not. She was stopped once. She was going very slow.

Q. She was going very slowly anyway, and she was stopped once at least that you know of?

A. Yes sir.

Q. You not being in the pilot house did not look at the compass?

A. No sir.

Q. You are enough of a seaman to know that you cannot tell the points of the compass in a fog, and the vessel turning, you cannot tell, no seaman or anybody else can tell how a vessel is headed when she is swinging in a fog without looking at the compass, can you?

A. No, when you cannot see anything.

Q. That is what I mean of course.

A. No.

Q. So that after you left the face of the Grand Trunk dock there was nothing else to see, was there?

A. No sir.

Q. It would be merely guess work after that time as to the exact course the vessel was steering, without looking at the compass?

A. We made the bell buoy. If I stood on deck I could not tell positively that we were on our course.

Q. Did you hear the whistles of the Indianapolis and the Kitsap?

A. I heard them both whistle.

Q. Did you hear the danger whistle?

A. I heard a jumble of whistles together.

Q. Did you take them to be danger whistles?

A. I did not know whether they were danger whistles or calling the dock up or something.

Q. Did you hear the crash of the collision?

A. No sir.

Q. Did you hear Henry Hanson call out "Throw a rope, for God's sake" or something like that?

A. No sir. I was looking ahead.

Q. Now you did not hear any voices at all?

A. No sir, I did not.

Q. Could you distinguish the whistles of the Indianapolis, did you know her fog whistle?

A. Yes sir.

Q. Did you hear her, to distinguish her whistles?

A. I heard her whistles, I knew what it was.

Q. About how long after you left your dock was it that you heard the whistles, this jumble of whistles, I mean?

A. You mean the number of minutes?

Q. Yes sir.

A. I could not tell you, I was not keeping the time.

Q. Could you form any opinion?

A. All I could do would be to guess at it.

Q. When you testified, captain, that the Reliance did not go south of the Grand Trunk dock, you are testifying to a fact because of your previous experience, are you not, on that course?

A. And my experience on that trip.

Q. But you could not say of course whether or not you got south of the Grand Trunk dock?

A. No, but we steered a certain course every day.

Q. You were not in the pilot house?

A. No sir.

Q. So that you do not know what course was actually steered?

A. No sir.

Q. Did you give us an estimate as to how far these whistles were when you heard them?

A. No sir.

Q. You do not know?

A. No.

Q. It would be rather hazardous guessing for a man of experience, would it not?

A. Well, they were not very far away—what I mean, in a fog, not very far away. I mean they were very plain to be heard.

Q. You do not think they would be a thousand feet from where you were then?

A. Well, I would not think they would be quite that far.

REDIRECT EXAMINATION:

Q. (Mr. Merritt). You were on the lookout on the bow of the Reliance?

A. Yes sir.

Q. Could you tell when you saw the Grand Trunk dock, whether you were passing it straight down the waterfront or turning away from it?

A. We were swinging.

Q. And did you continue to swing as long as you saw the Grand Trunk dock?

A. Well, as long as I saw the dock we were swinging, yes.

Q. And swinging which way?

A. Swinging to starboard, ahead and starboard.

Q. And the way you were swinging from the Grand Trunk dock at the time you last saw the dock, would that carry the Reliance south of the Grand Trunk dock?

A. No sir.

Q. Then what do you mean by saying that your opinion or your testimony, that the Reliance did not go south of the Grand Trunk dock, is based upon your experience of that voyage, what do you mean by your experience of that voyage?

A. Well, if we had gone south of the Grand Trunk dock, and then steered the course we do day after day, we would have gone inside of the bell buoy at West Seattle, we would have gone ashore at Duwamish head inside the bell buoy. In other words we would not have cleared the point if we had been up the bay any further, and run across.

Q. Did you take into account the course you were making at the time you saw the Grand Trunk dock?

A. I do not know what you mean.

Q. (Mr. Bronson). You are employed by the owners of the Kitsap now, are you not?

A. Yes sir.

Q. And were then?

A. Yes sir.

(Testimony of witness closed).

R. McDONALD, a witness called on behalf of the libellant, being duly sworn, testified as follows:

Q. (Mr. Merritt). Where do you reside?

A. 1921 First Avenue, Hotel Alexander.

Q. What is your business?

A. Freight clerk pier 4.

Q. Where were you employed on December 14th 1910, the day of the collision between the Kitsap and Indianapolis?

A. Pier 4.

Q. Where were you at the time of the collision?

A. I was out then at the end of the dock, probably 20 feet from the end door.

Q. Do you know about what time it was?

A. I would not give the exact time.

Q. Did you see the Kitsap when she left the dock the second time, before the collision?

A. I saw her just as she was leaving it. I did not see her after she left.

Q. You saw her as she was leaving?

A. Yes sir.

Q. It was after that time that you were on the end of the dock?

A. Yes sir.

Q. How long after that while she was leaving did you go out?

A. Just when she was letting the lines go. I did not see her clear the dock at all.

Q. Did you hear any sounds, any whistles, any sounds after that?

A. Well, I heard the danger whistles shortly afterwards when I was at the end of the dock.

Q. What whistles did you hear?

A. Four whistles.

Q. From what boat?

A. The Kitsap, sounded to me like.

Q. Did you hear any other whistles or sounds?

A. There were several whistles blowing after that time.

Q. Did you know the Kitsap's whistles?

A. Yes, I knew the Kitsap's whistles.

Q. And what direction, from where you stood, were these whistles?

A. Well, as close as I could judge, I assumed it was between 5 and 6, probably on a straight line off 5.

Q. That would be to the northward of where you stood?

A. Yes sir.

Q. Did you notice the Reliance when she left?

A. Well, she left shortly after the Kitsap.

Q. Did you pay attention to the course she took?

A. No sir.

(Testimony of witness closed).

W. L. GAZZAM, recalled on behalf of the libelant, testified as follows:

Q. (Mr. Merritt). Mr. Gazzam, where were you when the Kitsap came in to pier 4 on the south side, on the day of the collision?

A. I was at the face of the dock.

Q. Did you have any talk with Captain Hanson at that time?

A. Yes, I walked over to where he made his landing.

Q. I will ask you what his manner was at that time?

A. He reported to me that he had an accident out in the bay and asked me what course to pursue, and I told him—

MR. BRONSON: I object as incompetent, irrelevant and immaterial, and heresay evidence in any event.

MR. MERRITT: I do not care about the conversation.

Q. I want to know what his manner was, whether or not at that time he appeared nervous or whether he said anything to you about not wanting to take the Kitsap out the second time?

A. No sir, he did not. He asked me what I wished him to do.

Q. Did he appear nervous?

A. No sir.

Q. Or excited in any way?

A. No sir.

Q. Did he appear to you as being in a condition which it would be improper for him to take the vessel out?

A. No sir. I should not have permitted him to if he had.

Q. Do you know what time she left the dock the second time?

A. 4:35 by my watch, because I took my watch out and checked the time as he went out.

Q. Now you saw the way she backed away from the dock, did you?

A. Yes sir.

Q. How did she leave the dock?

A. She left the dock from the south side, backed on a parallel line with the dock to pier 5, or in the neighborhood of pier 5. I stepped over and gave the captain of the Reliance instructions to throw off his lines, about 4:36 by my watch. And the Kitsap then came ahead about the time we kicked back, we gave one kick back which probably carried her just enough to clear, and came forward again.

Q. Did you leave on the Reliance?

A. Yes sir.

Q. Where did you stand on the Reliance?

A. I stood forward of the pilot house on the port side and Mr. Jackson was my nearest neighbor at that time, but he was aft of my position.

Q. Did you see the Kitsap after that?

A. Yes sir. As she came ahead I saw her swinging.

Q. Which way?

A. To starboard.

Q. How long did you continue to see her?

A. I saw her probably not to exceed two minutes. We were going very slow; both boats were going very slowly.

Q. What course did the Kitsap follow during that time?

A. The Kitsap swung to starboard, and we swung to starboard past the Grand Trunk dock, to the north of the Grand Trunk dock.

Q. Did you go south of the Grand Trunk dock?

A. No sir.

Q. Was the Kitsap ever south of the Reliance?

A. No sir.

Q. Did you hear the whistles afterwards?

A. I heard the whistles, without distinguishing that it was the Indianapolis. I heard the Kitsap's whistles. I heard

a shrill whistle which I supposed was a launch whistle or small government boat, which has a similar whistle, known as the Lieut. Karney.

Q. Which direction were these whistles from the Reliance?

A. They were abaft of the beam of the Reliance, well abaft at the time that I heard them.

Q. Could you tell about how far away they were?

A. I could not, sir, except as a mere guess they were not exceeding a thousand feet from us.

Q. What was the condition of the fog?

A. Very thick.

Q. From the city to Duwamish Head?

A. Very thick, sir.

Q. Was it rising or lowering?

A. No sir, not from 4:30 until we reached the buoy, at the time we passed the buoy it lightened a little and by the time we reached Alki Point it was very clear.

Q. You say you saw the lights of the Kitsap. Describe what lights and how they appeared at the different times, with reference to the Reliance?

A. I was forward of the pilot house sufficiently to see the entire body of the Kitsap, until she swung to the northward, when I saw her range light go out of sight.

Q. Had she completed the turn when you last saw her?

A. Practically at right angles with our position, which was headed right from the Grand Trunk dock to where we supposed the buoy was. We found the buoy afterwards on that course.

Q. And the Kitsap was headed to the northward from you?

A. Yes, she diverged from us to the starboard I should say, which was to the northward.

Q. Calling your attention to libelant's exhibit "J" for identification, and the courses marked on that exhibit of the Reliance and the Kitsap, I will ask you whether or not from your opinion that correctly represents the position of the two boats at the dock and the curve they took in leaving the dock?

A. In my opinion yes sir.

Q. Who was the master of the Reliance at that time?

A. Captain Anderson. Gust Anderson.

Q. Where is he now?

A. He is first officer of the Whatcom on last Monday or Tuesday.

Q. And what company does the Whatcom belong to?

A. Inland Navigation company—the Puget Sound Navigation company's allied interests.

Q. The same owners as the owners of the Indianapolis?

A. Yes sir.

Q. Mr. Gazzam were you present when libelant's exhibits "H," "F," "G," and "E" were taken?

A. Yes sir.

Q. The photographs?

A. Yes sir. They were taken at two different periods these four photographs. Two of them immediately after she came out of the water.

Q. Which of these were taken immediately after she came out of the water?

A. The ones marked "E" and "F."

Q. Where were these photographs taken?

A. West Seattle, right alongside the Ferry.

Q. Do these correctly show the condition of that part of the vessel covered by the photographs at that time?

A. Yes sir.

Q. And as she came out of the water?

A. Before the removal of any debris of any character or description was permitted.

Q. Where were exhibits "G" and "H" taken?

A. On the dry dock known as Ward brothers dry dock, after she had been temporarily patched at West Seattle and towed over and placed in the dry dock, and some portion of the debris had been cleared out, just sufficient to make temporary repairs.

Q. Did the debris that had been taken out change the appearance of the cut in the vessel in any way?

A. Not a particle, sir, except it cleared the debris from the interior of the cut and the edges of the cut.

Q. I will ask you whether or not these exhibits "G" and "H" correctly show the cut in the Kitsap at that time?

A. Yes sir, at that time.

Q. And when this debris in the interior was removed for the purpose of making that patch?

A. Yes sir.

Q. The patch was an outside patch to tow her over from West Seattle?

A. Canvas and light lumber, necessary to pump her out to float her.

Q. To take her to the East Waterway?

A. Yes sir, and place her in the dry dock.

CROSS EXAMINATION:

Q. (Mr. Bronson). Where is her house on exhibit "E?"

A. A large portion of it had been taken off by the cables cutting it off, sir. There was very little.

Q. What I am getting at is, this picture does not show the Kitsap as she would have appeared immediately after her collision with the Indianapolis and before she sank?

A. Oh no sir, because, during the period of wrecking, which took several weeks, the constant crushing of the cables and the constant hauling back and forth, took a great deal of her house off of her. The pilot house was completely destroyed. A great deal of the upper part of the house forward from the position that you see there, forward there, that whole structure was destroyed except the main house here after the collision that was there, in other words the main deck, the first house above the main deck.

Q. Where this log is laid there, what was done towards placing that log in position there?

A. The upper structure was not here at that time, the second story had been destroyed by the cables, or the saloon was not, the passenger house, and the pilot house above it, they had to go, a little on the other side of this cut here. This cut is the cut that the Indianapolis made.

Q. That is the cut immediately below the log?

A. Immediately below the log was all open and it was open up to the pilothouse deck. In other words that was com-

pletely open and to within a few feet of the keel. But the other side, they had to crush like this in there to get the boat up at all out of the water. This was her position coming out of the water, but prior to coming out of the water, a few feet below the water, we had to do some crushing on what is known as—I do not know whether the starboard or port side, I could not tell from here, but the reverse side from where we are now looking at and where that scow is.

Q. The cut that the Indianapolis made is the opening in the hull of this exhibit "E" immediately below this log?

A. Immediately below the log.

Q. That is the only cut that the Indianapolis made in the vessel?

A. It don't show the whole cut.

Q. And the rest of the wreckage, taking into consideration all the picture, is the result of the salvage operations?

A. A great deal of destruction was the result of the salvage operations and pressure brought to bear on the upper house. There was no destruction to the hull except what the Indianapolis did, but above the hull there was a great deal of destruction by the wrecking and the pressure of the water.

Q. She is healed over to starboard quite hard in that picture, is she not?

A. No sir, she is healed over slightly. That is the crushed house there.

Q. Is that house crushed over?

A. The house was crushed over. You can see the water line, here, you can see that, you can see the copper paint.

Q. That portion of the house immediately back of the picture of the man, had a large list, was crushed over?

A. Not to a great extent, but it was at a slight angle.

Q. All the wrecked portions.

A. You understand there was some damage done aft, her upper deck, right to the surface of the water. There is an angle that to get the log in between on the scows, made a good deal of damage.

Q. Mr. Gazzam, how long after you left the dock was it that you heard the whistles?

A. I should say not to exceed four minutes. Although

at the time I paid no attention after leaving the dock, which was, according to my watch 4:36.

Q. You were out on deck?

A. Forward deck.

Q. You were not observing the compass, were you?

A. No sir.

Q. How long did you see the docks?

A. I saw the docks for probably two minutes.

Q. And after that time did the vessel stop?

A. We stopped either once or twice. I am not familiar with the—

Q. Do you know what was done with the helm when you stopped?

A. No sir, I do not, except that we were swinging, the boat was swinging.

Q. You do not know whether the master of the vessel would swing her with the engines dead, with the helm to port or not?

A. His helm must have been hard over, making the swing the boat was.

Q. How do you know?

A. As shown by the other motions.

Q. Would he keep the helm hard over with the engine dead?

A. I could not say, I am not familiar enough with navigation to judge that. I never ride in the pilot house or very rarely.

Q. You do not know actually what course was steered after you left the docks, after you could not see the shore?

A. I know what course was steered positively until we swung to the westward toward the buoy, because we were close enough to the docks, to the Grand Trunk dock, to get our course, which is the usual course after that, sir. I absolutely have no knowledge of how far we passed out of sight of the docks, as to the course steered, until the buoy came in sight, then we were on our course.

Q. And you do not know, of course, what changes may have been made in the course?

A. After he swung clear of the Grand Trunk dock on

the usual course, then I am not familiar because the fog was very dense. We stopped somewhere along about eight or nine hundred feet from the dock on account of another vessel crossing our bow.

Q. Did you hear the crash of the collision?

A. I did not, sir.

Q. Did you hear Hanson call out anything?

A. No sir. All the cabins were between the whistles and myself, until later, when I walked aft. I walked aft after they told me that there was considerable whistling there and some one said they heard voices, I do not recollect who it was, but I walked aft, and it was after it was all over, and several moments after it was over. At that time the whistling had practically ceased. A great many passengers told me that they heard voices.

Q. You think it took you about two minutes from where you left until you passed the Grand Trunk dock?

A. Until we were out in the bay, sir, out of sight of the Grand Trunk dock.

Q. Took you two minutes to get out of sight of the docks?

A. I presume it did, although, as I say, I had no knowledge of the time, it is conjecture on my part. It was not to exceed two minutes, in my judgment.

Q. Well, is that as close an approximation as you could make with reference to the time when you heard the whistles, is it a fair division of the time into two parcels, you said that was about four minutes?

A. I think so. I said from three to four minutes if I recollect right. I think it was about it.

Q. What would you say was the speed of the Reliance?

A. She was going very, very slow, much slower than usual until—

Q. Was she going slower than the Kitsap?

A. I should say not sir. I should say she was swinging on about the same speed.

Q. At about what?

A. Not to exceed five knots.

Q. Five knots an hour?

A. Five knots an hour.

Q. This diagram here, exhibit "J," you testified that was a fair illustration, as you understand it, of the course of the vessels?

A. In my judgment.

Q. That, of course, is only a general approximation of it in any event, is it not? For instance, you do not know what the measurements are, do you?

A. I know about what these measurements are. It is about 300 feet to the inch, sir. It is a true scale of the wharves and the water front of the harbor of Seattle, based on about 300 feet to the inch.

Q. You had it made, I suppose?

A. I did not.

Q. Have you measured it up?

A. Mr. Merritt had that matter in charge.

Q. But you have not had it measured up?

A. It is my judgment that it is 300 feet to the inch. I have not measured it up with calipers, myself.

Q. But of course this course here, these courses here are based, are they not, Mr. Gazzam, on the ordinary and usual courses of the vessels?

A. No sir. It is my judgment of the course of the Reliance and Kitsap on that day, based on the fact that after clearing the Grand Trunk dock we have to head for the buoy. In other words, the Grand Trunk dock bulkhead is so far out beyond piers 3 and 4, that when we clear that we are headed well to the westward on the course to the buoy, whatever that course is.

Q. Mr. Gazzam, is it not a fair statement, that this exhibit and drawing was made to show the vessels clearing the Grand Trunk dock and not going south of it?

A. They could not clear the Grand Trunk dock—they could not go south and make the buoy, the way we made it that day.

Q. Were not these drawings made to show the vessels not going south of the Grand Trunk dock, was not that the primary object?

A. I could not say as to that, sir. I only saw this yesterday or the day before.

Q. Was not that what it was drawn for?

A. That you will have to take up with Mr. Merritt, who arranged for this chart, because I only had this exhibited to me a day or two ago. But this course, I base my testimony on the fact that we were going clear of the Grand Trunk dock. We could not go south of it and make the buoy in the regulation time that the Reliance made it that day, after we got under headway out here.

Q. Did you make the buoy in the regulation time?

A. No sir, we did not. We made it under slow bell.

Q. What excess time did you take?

A. The usual excess time in a fog.

Q. What would that be?

A. About 18 or 19 minutes that day.

Q. What is the ordinary time?

A. The ordinary time is 10 or 11 minutes. We went very slowly.

Q. What is your ordinary speed?

A. The ordinary speed of the boat is about 14 miles, 13½ to 14 miles, I should say. We have made the buoy with the Reliance under ten minutes, it is according to conditions.

Q. You ordinarily make it in about 11 minutes?

A. Less than that. Ten minutes.

Q. This day you took 19 minutes?

A. About 19 minutes. That day we stopped her once.

Q. And it took you practically twice as long that day?

A. Practically, because we stopped out here to let a vessel cross us.

Q. You stopped her twice?

A. Only once that I know about.

Q. At least once you stopped, and you took about four minutes time in getting out to the point where you heard the collision?

A. About, yes.

Q. That would not be to exceed a thousand feet?

A. That is my judgment, about a thousand feet.

Q. Then you made the rest of the time between that point and the bell buoy in a difference of six minutes?

A. We probably stopped a minute or two when this black

vessel crossed our bow, which was almost at the same time of the collision. I did not recognize the vessel.

Q. Then, as a matter of fact, Mr. Gazzam, you only took about four minutes more time to make the bell buoy, than you made in ordinary fair weather?

A. No, I should say a little longer than that.

Q. If you deduct ten from 19, you have nine minutes left for excess?

A. If it took four minutes to reach this point.

Q. Which would be ordinary speed?

A. No sir, that was very slow.

Q. You made this turn at what speed?

A. We made this turn at very slow speed that day, half our usual slow speed. We were going very slow.

Q. That was a comparatively short distance that you made out there, a thousand feet?

A. I should say.

Q. Out of the ten thousand, one tenth of the total distance?

A. I think the bell buoy is practically—

Q. A little over two miles?

A. Yes.

Q. So that you made the difference from this point on to the bell buoy, including the stop for the vessel which interfered with you, in the excess of time between 10 minutes and 19 minutes?

A. You must recollect that 10 minutes includes our slow swing around before we get the jingle bell, from the time we leave the dock.

Q. That includes it this same day?

A. Yes.

Q. Then, don't you see, Mr. Gazzam, that you would have to make better than 5 knots an hour, if your ordinary speed is 14 knots an hour?

A. I did not say 14 knots, not to exceed 14 miles, which may be $13\frac{1}{2}$.

Q. In any event you would have to make better than 5 knots?

A. Not on this first turn, sir, not this thousand feet.

Q. You were outside?

A. Outside. We certainly would. When we slow that boat down in a fog we do not slow her down to five knot speed except in the harbor when close around the docks, but out here we would probably make better than five knot speed.

Q. How was the fog?

A. That is not half speed, but better than—in other words until we reached a point somewhere near the buoy, they did not play the boat up to any speed. I did not hear the bells, but judging from the action of it, I have ridden on the boat for the last eight or nine years and I know the action of the boat.

Q. Would the same thing be true of the Kitsap?

A. I could not say, sir. I was not aboard the Kitsap. She made about the same speed to the point of divergance, but beyond the point of divergance, where we lost sight of her, I do not know anything about it.

Q. Well, as the owner of the Kitsap, making the trip she had to make, would you expect them to run her 15 knots?

A. Until after she reached that course headed toward Port Madison—

Q. Then you would expect her to make what?

A. A good deal better speed after she had cleared the harbor.

REDIRECT EXAMINATION:

Q. (Mr. Merritt). Did the wrecking operations damage the main hull?

A. Not beyond the damage of the cable, which was very slight.

(Testimony of witness closed).

MR. MERRITT: I offer identification "J" in evidence. Chart marked libelant's exhibit "J," filed and returned herewith.

Hearing adjourned, to be resumed September 1, 1911, at 10 a. m.

Seattle, Washington, Sept. 1, 1911.

Continuation of proceedings.

PRESENT: Mr. Merritt, for the libelant.

Mr. Bronson, for the Claimant.

MR. H. A. EVANS, a witness called on behalf of the libellant, being duly sworn, testified as follows:

Q. (Mr. Merritt). What is your profession, Mr. Evans?

A. Naval constructor in the United States Navy.

Q. What is your rank in the Navy?

A. Lieutenant commander.

Q. State where you graduated, and what, if any, experience or instructions you have had in the line of your profession?

A. I was graduated from the Naval Academy in 1892. Went to sea two years. During that time a short time in the engine room, but principally my duty consisted of deck officer and assistant navigator. I was examined for promotion to Ensign in 1894. I might also state that on that examination our cruise note-books on navigation were examined at the Naval Academy, and I received a perfect mark, and that they were retained at the Naval Academy as exhibits for instruction for midshipmen. I was commissioned as Ensign in the Navy the 1st of July 1894. Went to sea for deck duty and served at sea until October 1895, when I was sent by the government to the University of Glasgow to take a course in Naval Architecture, shipbuilding and engineering. This course lasted two years approximately, and at the end of the time of two years at the University of Glasgow, I received a certificate from that institution which read "Passed with great distinction." From April 1897 I have been continuously engaged in the practice of my profession, which consists of inspecting, surveying, repairing and building ships.

Q. Where were you residing in December 1910?

A. At Seattle.

Q. What were you engaged in at that time?

A. I was the government inspector for the vessels building at the works of the Moran company for the government—vessels building at the works of the Moran company.

Q. How long did you remain there?

A. I remained there until about the 22nd of May of that year.

Q. Then where did you go?

A. I was ordered to Bath, Maine, as superintending constructor of the government vessels building at that place.

Q. What are you engaged in now?

A. At the present time I am on duty at the Navy Department at Washington, in connection with the introduction of scientific management into the government Navy Yard.

Q. Have you moved your family yet from Seattle?

A. No, my family yet is in Seattle.

Q. Mr. Evans, have you heard or read any of the evidence in this case?

A. I have heard practically all of the evidence in this case, and have made a careful study of all written record that has been written up, except the last hearing, at which time I was present.

Q. Did you see the Kitsap after she was raised last December or January?

A. I did.

Q. Where?

A. On February 4th I examined the Kitsap. She was lying at West Seattle.

Q. When was that with reference to the time she was actually raised from the water?

A. I could not say when she was actually raised, but it was very soon after that. It was a time before any of the rubbish had been cleaned out from the hole made in the hull proper, of the Kitsap, and before any temporary patching had been made to carry her to the Elliot Bay Dry Dock. I at that time asked Mr. Gazzam to have photographs made of her as she lay, and this was done. I also cautioned Mr. Gazzam against allowing any changes to be made in the hull, made in the structure proper, and I heard Mr. Gazzam direct the employees to make no changes in cleaning out the rubbish or placing temporary patches. I examined the Kitsap later on the Elliot Bay Dry dock. This was very soon after she was placed on the dock. As I remember it it was February 8th. I made an examination on that day, and after that time I made many minute examinations of the damage.

Q. You heard Captain Penfield's testimony in this case, did you?

A. I did.

Q. Captain Penfield testified that on December 14th, immediately after the Indianapolis was in collision—or immediately before that, he steered a course from the bell buoy, north east by east one quarter east, and he introduced in evidence a government chart, which I believe is Claimant's exhibit 4, in which he marked the alleged course of the Indianapolis and also the Kitsap. I will ask you to examine this chart and state whether or not the course of the Indianapolis as marked thereon is north east by east quarter east?

MR. BRONSON: I object as calling simply for the opinion of this witness, upon a matter which is demonstrable to the Court, or by the Court, upon an examination of the chart itself.

A. I will take a pair of parallel rulers and place it upon the compass rose, on the course north east by east quarter east, and transfer that down to the course shown on Claimant's exhibit 4; the course shown from the buoy to off the north side of the Grand Trunk dock is not the course north east by east quarter east magnetic.

Q. What is that course as marked on that chart?

A. By placing the parallel rulers on the course shown on this exhibit, running between the buoy and the north side of the Grand Trunk dock, and transferring it to the compass rose, and taking off the course there, it is very close, almost exactly, north east by east one half east, magnetic.

Q. What is the difference between the two courses on the chart?

A. The course, by examination of the chart Claimant's exhibit 4, the course north east by east one half east, magnetic, ends on the Seattle side, approximately a little north of the Grand Trunk dock, while the course north east by east one quarter east, magnetic, from the buoy, ends on the Seattle side off pier 4.

Q. When you say the Seattle side, which side do you mean, north or south side?

A. When I say the Seattle side I mean the side of the bay on which Seattle is located.

Q. That on the chart would be the northward side?

A. The northward side.

Q. Now the Indianapolis, if she steered this course north east by east quarter east, as testified by Captain Penfield, are the various positions of the Indianapolis as indicated on this exhibit correct?

A. They are not.

Q. Have you platted the course north east by east quarter east, the course Captain Penfield testified he steered the Indianapolis immediately preceding the collision, by the government chart?

A. I have.

Q. Produce the chart.

A. (Witness does so). On this government chart, which by examination of the two charts shows that it is the same issue of chart that Captain Penfield used, I have plotted the course north east by east a quarter east from the buoy. It is shown in the black line on this chart, which is marked "Course north east by east one quarter east," and has a pencil mark right above this "Indianapolis."

Q. Have you transferred on this chart the various positions of the Indianapolis as testified to by Captain Penfield, and marked on Claimant's exhibit 4?

A. By taking Claimant's exhibit 4, and on the course shown there, taking off the distances of the various positions marked "X," and a line across the course, and "Ind," I have transferred these distances on the government chart which I have just been referring to, and on which I placed the north east by east one quarter east, the same distance on this course, and have marked them in red. A "X 4:38," which corresponds to the cross in pencil and one and one quarter minutes right above the cross on Claimant's exhibit 4. Also in red, the straight mark across the black course marked 4:39, which corresponds to the straight mark in pencil across the course on Claimant's exhibit 4. And also a small ship-shaped mark in red 4:40 which corresponds to the small ship-shaped form in pencil on Claimant's exhibit 4 marked "Ind." I have also transferred the course of the Kitsap as shown on Claimant's exhibit 4 in pencil, to the chart which I now have in my hands, and which I marked a course in red.

Q. Did you also transfer the position of the Indianapolis at 4:36, as shown in Claimant's exhibit 4?

A. I did not. The position 4:36 is based on their testimony and the speed at which the Indianapolis ran. The testimony of Captain Penfield.

Q. That is the mark on your chart—

A. That is marked on my chart.

Q. And that is based on Captain Penfield's testimony as to the speed he ran?

A. Yes sir.

Q. And the mark 4:33 is—

A. Also based on Captain Penfield's testimony at the time he was at the buoy.

Q. Now in plotting this course, Mr. Evans, where have you placed the Indianapolis with reference to the bell buoy?

A. I have placed it very close to the bell buoy, just sufficient space to round the bell buoy on the northward side.

Q. That is the same as Captain Penfield placed it on his chart?

A. That is not exactly the same. Captain Penfield has his course running direct from the bell buoy, while I have allowed a little bit of distance to round the bell buoy, as can be seen from the chart.

Q. If the Indianapolis was further away from the bell buoy to the northward, would that affect the place she would strike the docks on the course that you have plotted?

A. It would.

Q. How would it affect that?

A. If the Indianapolis was further away from the bell buoy than I have shown to the northward when Captain Penfield set the course north east by east quarter east, to which he testified, he steered a course, the actual course of the Indianapolis would then be to the northward of this course which I have shown north east by east one quarter east, parallel to it, and the distance to the northward which the Indianapolis was further away from the buoy.

Q. Now, referring to Claimant's exhibit 4, I will ask you, if the Indianapolis was at the point marked X at 4:38 and

at the point marked 1 with a line across it at 4:39, to state what speed the Indianapolis made during that time?

A. I have made some of these calculations to save time. I will refer to it. The Indianapolis made during that period from 4:38 to 4:39, ten and a quarter knots or eleven and three quarter miles an hour. That is the average speed she made.

Q. Now, if the Indianapolis was at the point I in Claimant's exhibit 4, at 4:39, and at the point marked "Ind" at 4:40 what speed did she make at this time?

A. The point I that you refer to evidently means the straight line across the course?

Q. Yes.

A. She would make during that period, 4:39 to 4:40, an average speed of 9.18 knots, or which is approximately ten and a half miles an hour.

Q. Captain Penfield has testified that the Indianapolis at 154 revolutions of the engines makes 15 knots, and at half speed, 130 revolutions, she makes 12 knots. He has also testified that at 4:38 the boat Indianapolis was at half speed. That at 4:38, after he put her under slow speed, or 90 revolutions, and at 4:39 he stopped the engines. That at 4:39 the Indianapolis was probably making a speed of four or five miles an hour. I will ask you to state the approximate speed of the Indianapolis at 4:39 one half to one minute before the collision, according to captain Penfield's testimony?

MR. BRONSON: I object as calling for a conclusion of the witness on a state of facts that he is not shown to know anything about, namely the hull of the ship, etc., and calls for his opinion upon an assumption of figures which is apparent from their own statement he has no information. And upon the further ground that the Court is as well qualified to make the computation as the witness is.

A. Under the conditions named, the Indianapolis was making at that time about nine and a half miles an hour.

Q. If the Kitsap kept on the course shown on Claimant's exhibit 4, and the Indianapolis stopped at the point marked "Ind" on Claimant's exhibit 4, could the collision have taken place, in your opinion?

MR. BRONSON: I object as calling for a conclusion of

the witness, not based on knowledge of the facts or conditions and which is simply conjecture on his part as to an answer.

A. By taking Claimant's exhibit 4, and placing a straight edge on the end of the course of the Kitsap as shown on Claimant's exhibit 4, that is by extending the course which he has shown, it will strike the course of the Indianapolis as shown on this exhibit well forward of the position marked "Ind", and therefore, if the Indianapolis stopped at the position marked "Ind" and the Kitsap continued on this course, a collision would not have taken place.

Q. If the Indianapolis should advance beyond the position marked "Ind" on this exhibit, and the collision took place at 4:40, both vessels traveling on the course shown on exhibit 4, what speed would the Indianapolis make from the position marked with the straight line there at 4:39?

A. By extending the course of the Kitsap with the straight edge referred to in the answer to the previous question, until it crosses the course, and marking the point where crosses, which is just at the top of the figure 3 of the depth mark 31, we get the position at which the Kitsap would cross the course shown on the chart of the Indianapolis. By taking off the distance on this Claimant's exhibit 4, from the point which has been called I, to this mark, it is found to be one inch. On the scale of the chart, one inch is equal to 1666 feet.

Q. She was at I at 4:39 and position "Ind" at 4:40.

A. If the Indianapolis were at the position marked I at 4:39 and at the position on this course which would make a collision possible, the Kitsap remaining on the course shown from the data taken from the chart, and the calculations which I have made here, the speed of the Indianapolis, average speed, would be during that period 19 miles an hour.

Q. About how many statute miles?

A. 19 statute miles.

Q. How many nautical miles I mean, approximately?

A. About 16.4 knots an hour.

Q. Now if the Indianapolis was at the buoy at 4:33, and at the point marked X at 4:38, what is the average speed between those two points?

A. 15 knots an hour.

Q. You have already calculated that?

A. Yes sir.

Q. Now if the Indianapolis was at the buoy at 4:33 and at the point marked "Ind" at 4:40, to make a collision possible, on the course shown on Claimant's exhibit 4, what is the speed of the Indianapolis between these two points?

A. It is just a shade less than 15 knots an hour. Do you want the exact calculation?

Q. No.

A. To all intents and purposes it is 15 knots an hour, the average speed.

Q. Now, if the Kitsap backed from the south side of pier 4 with the helm hard astarboard, stopped in front of pier 5, and went ahead under 60 to 65 turns of the engine, with the helm hard aport, tide ebbing, until she rounded to on a course which would just clear Four mile rock, does the track shown by captain Penfield on Claimant's exhibit 4 as the course of the Kitsap, correctly show the course you have?

A. It does not. It does not even approximately.

MR. MERRITT: We offer this chart produced by the witness in evidence.

Chart marked libelant's exhibit "M", filed and returned herewith.

Q. Referring to the chart which you have made, and which has been marked libelant's exhibit "M", on which you have plotted the course north east by east one quarter east of the Indianapolis, as testified to by captain Penfield, and on which you have plotted the position of the Indianapolis, as given on captain Penfield's chart, Claimant's exhibit 4. Captain Penfield testified that at 4:38 he heard the Kitsap's whistle one point on the port bow. Point out where the Kitsap must have been to make this possible?

A. From the position on the course north east by east one quarter east, marked with a red cross and 4:38, I have drawn a dotted line to the northward of this course, which is exactly one point on the port bow. The Kitsap to have enabled Captain Penfield to hear the fog whistle one point on the port bow at the time 4:38, must have been somewhere on this dotted line which is drawn from the mark 4:38 to

approximately off pier No. 7. If the Kitsap was in close to the dock she was off pier 7, to have made this possible.

Q. Now, if the Kitsap backed from the south side of pier 4 at 4:35 to the front of pier 5, and went ahead at 60 or 65 revolutions of the engine, under a port helm, could she have been one point off the port bow of the Indianapolis at 4:38?

A. She could not.

Q. Captain Penfield has testified that at 4:39 he heard the Kitsap whistle one point off the starboard bow. Where must have been the Kitsap to have made this possible, according to libelant's exhibit "M"?

A. On libelant's exhibit "M", position at 4:39, I have drawn to the southward of the course north east by east quarter east, a red dotted line, which is one point on the starboard bow. This line runs from 4:39 to just north of the Colman dock, and if the whistle was heard as testified, the Kitsap was somewhere on this dotted red line.

Q. If the Kitsap was close in to the dock, when the whistle heard by captain Penfield one point on the port bow at 4:38, and one point on the starboard bow at 4:39, what speed must the Kitsap have made to get from one position to the other?

A. I have worked that out, and the speed is about—to make this possible—15 knots or 17 miles an hour.

Q. If the Kitsap followed the track shown on Claimant's exhibit 4, and the Indianapolis steering the course testified by Captain Penfield, north east by east quarter east, could the Kitsap at any time have been one point on the port bow of the Indianapolis?

A. She could not.

Q. If the Kitsap left pier 4 at 4:35 and followed the course shown on Claimant's exhibit 4, and had sufficient speed to get to the point marked "Ind" at 4:40, could she have been on the port bow of the Indianapolis at 4:38?

A. She could not.

Q. How far was the Indianapolis from the Kitsap when the Kitsap was on the port bow of the Indianapolis as shown by the officers of the Kitsap?

A. The only time that the Kitsap could have been on

the port bow of the Indianapolis, if the Indianapolis steered the course north east by east quarter east, as testified by Captain Penfield, is when she backed up off pier 5, and at that time, which was approximately 4:36, she could have only been 2° on the port bow of the Indianapolis, that is practically one fifth of one point. After 4:37 she was never on the port bow of the Indianapolis, always being on the starboard bow. The distance that the Indianapolis was from the Kitsap at the time 4:36 is approximately one and one eighth miles.

Q. Now Mr. Evans, Mr. Burns, a witness for Claimant testified he saw the Kitsap pass the end of the Colman dock going south at right angles to the dock, and that she was going 10 or 12 miles an hour, and not changing her course, and he had her in sight for about a minute. I will ask you to state what distance the Kitsap would travel in that minute?

A. The Kitsap travels at 10 knots, 880 feet to the minute, and at 12 knots, 1056 feet a minute.

Q. If the Kitsap passed the Colman dock as Mr. Burns testified, when he saw her off the front of the Colman dock going at 12 miles an hour and remained in sight one minute, where would she be at the end of that minute?

A. On libelant's exhibit "J" I have shown a pencil line indicated by a—b and marked 1056 feet. This line is approximately at right angles to the Colman dock. If the Kitsap ran on a course approximately at right angles to the Colman dock, as shown on this line a—b, and was seen off the end of the Colman dock at the point "a" and kept in sight for one minute, she would run on this line 1056 feet to the point "b", which is nearly down to Jackson street.

Q. If Mr. Burns saw the Kitsap 100 feet away passing the Colman dock, as testified, how far would the Kitsap be from the dock ten seconds after?

A. Approximately 200 feet.

Q. Captain Brydesen, a witness for the Claimant, has testified that when he first saw the Kitsap, she was off the end of the Colman dock, and on a course approximately

the same as shown on Claimant's exhibit 9, marked course of Kitsap Dec. 14. He also testified that the Kitsap was going at the rate of 10 miles an hour or more. He also testified he held her in sight for three quarters of a minute or a minute. Taking her speed at the lowest placed on it by Captain Brydesen, at 10 miles an hour, and the lowest time she was in sight, three quarters of a minute, indicate on Claimant's exhibit 9, the location of the Kitsap at the end of this time?

A. In three fourths of a minute the Kitsap traveling at 10 miles an hour, would travel 792 feet. The scale of exhibit 9 is 100 feet to the inch. She would therefore travel on this chart 7.92 inches. By laying off 7.92 inches on a strip of paper, and checking the position off the end of the Colman dock on exhibit 9, and measuring around this distance on the course, the Kitsap at the end of the time stated, three quarters of a minute, would be at the point marked with a large cross and a circle around it.

(At this time a recess was taken until 2 p. m. this day.)

Afternoon session. Continuation of proceedings:

PRESENT: Mr. Merritt, for the libelant.

Mr. Bronson, for the Claimant.

MR. H. A. EVANS, on the stand for further

DIRECT EXAMINATION:

Q. (Mr. Merritt). Mr. Evans, you have marked on Claimant's exhibit 9 with an X and a circle around it, the point at which the Kitsap would have gone out of sight of the last witness referred to. Now will you state how far that point is from the end of the Colman dock?

A. Approximately 700 feet.

Q. Calling your attention to this exhibit, Mr. J. E. Gleason, a witness for the Claimant, testified that he first saw the Kitsap at a point marked with a small "k", and he last saw her 100 feet south of the Colman dock, and she was going 10 or 12 miles an hour. I will ask you how long she would be in his sight?

A. From the point "k" to 100 feet south?

Q. Yes.

A. And you want to know how long she would be in sight?

Q. Take her speed at ten miles.

A. A little over two and a half seconds—I will check that again.

Q. He first saw her at point "k" and lost sight of her 100 feet south of the Colman dock.

A. That answer is wrong. I missed my decimal point. Taking 100 feet south of the Colman dock marked on the course of Kitsap on December 14, and measuring from that point to the point small "k", it is 3.6 inches, which would be 360 feet, the distance traveled. Going at 10 miles an hour she travels 880 feet a minute or 14 and two thirds feet a second. By dividing that into the 360 feet traveled, the time in sight is 24 seconds.

Q. Then if she was going 12 miles an hour instead of ten miles she would be in sight less than 24 seconds?

A. She would.

Q. Now, still referring to this exhibit 9. If the Kitsap backed away from the south side of pier 4 at 4:35 to the front of pier 5, and then at 4:36 went ahead on the course marked on the exhibit as Course of K Dec. 14, and arriving at the point of collision at 4:40, what would the Kitsap make from pier 5 to the point X or point of collision?

A. That is approximately five and a quarter knots an hour.

Q. If the Kitsap made 12 miles an hour on this course, and left pier 4 at 4:35, what time would she arrive at the point of collision marked X on this exhibit?

A. About 4:38.

Q. If the collision took place at the point marked X at 4:40 and the Indianapolis left the bell buoy at 4:33, what speed would the Indianapolis make to this point X?

A. If the Indianapolis took a direct course from the buoy to the point marked X on exhibit 9, she would make an average speed of nearly 16 knots an hour. To be exact it is 15.86 knots an hour.

Q. Now I will ask you whether or not this course

marked on this exhibit 9, as the course of the Indianapolis, would be the course followed by the Indianapolis from the bell buoy, if she steered the course north east by east quarter east, as testified by Captain Penfield?

A. It is not.

Q. If the Kitsap backed away from the south side of pier 4 with her helm hard astarboard in front of pier 5, and then stopped and went ahead with her helm hard aport, is the course marked on this exhibit "Course K. Dec. 14", represent the direction this vessel would follow?

A. It does not approximate to the direction she would follow.

Q. If the Kitsap backed from pier 4 in front of pier 5, and then went ahead under 60 to 65 revolutions of the engine, with her helm hard aport until she rounded to on a course that would just clear Four Mile Rock, would she pass the face of the Colman dock there on a straight course, at right angles to the dock as testified to by Burns, or pass the face of the Colman dock on the assumption of Brydesen, Edgar or Gleason?

MR. BRONSON: I object on the ground that the question is based on highly problematical questions as to the degree the helm was over, the set of the tide and the speed of the boat, and many other conditions which might make the answer wholly inaccurate and problematical.

Q. Taking into consideration in answering this question also that the evidence in this case is undisputed that the tide was ebbing at this time?

A. She would not.

Q. If the fog was such that the vessel could be seen from one to two hundred feet away, could she have been seen from the end of the Colman dock, if she had turned on this course?

A. She could not. She was never near here, never nearer here under the conditions given than five or six hundred feet.

Q. Mr. Jacobs, a witness for the Claimant, testified, that at no time after the Indianapolis rounded the bell buoy,

did she travel faster than eight and a half statute miles. If the Indianapolis passed the bell buoy at 4:33 and steered the course north east by east quarter east, averaging eight and a half miles an hour, to the point of collision, and the collision took place at 4:40, where would the Indianapolis be at the time of the collision?

A. Eight and a half miles an hour. The collision at 4:40. She would be one mile from the bell buoy, which is about half way across the bay.

Q. And about how far would that be from the point of collision?

A. About three quarters of a mile.

Q. Mr. Jacobs also testified that the Indianapolis ran a mile from the bell buoy at a speed of eight and a half statute miles an hour, and then reduced her speed considerably lower than eight and a half miles an hour, and continued at this slow speed until off the docks and immediate proximity to the docks, and then stopped the engines, and the collision then occurred. Taking these conditions, and the testimony that the Indianapolis was on a course north east by east quarter east, testified to by Captain Penfield, and assuming that the considerably slower speed which Mr. Jacobs referred to, to be five miles an hour, how long would it take the Indianapolis to go from the bell buoy to the immediate proximity of the docks, when she passed the bell buoy at 4:33?

A. One mile at eight and a half miles an hour would be about seven minutes. Then traveling the rest of the distance to the immediate proximity of the docks at five miles an hour, would take 12 minutes, or a total of 19 minutes to go from the buoy to a point in immediate proximity to the dock, which would make the collision, if she left the buoy at 4:33, at 4:52.

Q. What point have you taken as the immediate proximity that you refer to?

A. I have taken out about a quarter of a mile from the end of the dock.

Q. You have taken then approximately the point of collision as being his proximity to the dock?

A. Yes sir.

Q. Mr. Jacobs testifies that he first heard the Kitsap's whistle two or three points on the port bow of the Indianapolis. If the Indianapolis was on this course north east by east quarter east, as Captain Penfield testified, and the Kitsap backed away from the south side of pier 4 to the front of pier 5, and went ahead, could the Kitsap have ever been from two to three points on the port bow of the Indianapolis?

A. She could not.

Q. Mr. Jacobs testified that he heard the Kitsap's whistle two or three points on the port bow of the Indianapolis and two or three minutes before the collision, then, later heard it two points on the starboard bow, and it remained in that general direction until the collision. Could the Kitsap have gotten from the first position of two or three points on the port bow to the position of two points on the starboard bow, and continuing at about that position until the time of collision, the Indianapolis continuing on the course north east by east quarter east, in three minutes?

A. She could not. It would require a speed of about 25 miles an hour to do it.

Q. Mr. Percival, a witness for the Claimant, testified that the engines of the Indianapolis were stopped about three minutes before the collision occurred, and never went ahead again. If the Indianapolis passed the bell buoy at 4:33 and the collision occurred at 4:40, a distance of one and three fourths nautical miles from the buoy, and the engines were stopped between 4:33 and 4:40 for three minutes, what average speed would the Indianapolis have to make to reach the point of collision at 4:40?

A. The engines were stopped for how long?

Q. Three minutes.

MR. BRONSON: I object to that. It is wholly problematical. It is not shown that the witness knows what speed or capacity the Indianapolis has to start and stop or slow down, nor any of the conditions which would be necessary in order to determine with any degree of accuracy the answer to the question.

A. I can give absolutely the average speed between these two points. I cannot give the speed while the engines were stopped. Taking, therefore, the average speed between these two points, the Indianapolis would make 15 knots an hour as an average speed.

Q. If this were her average speed and the engines were stopped for three minutes, would the speed with her engines working ahead be higher or lower than 15 knots?

A. Must necessarily be considerably higher.

Q. Assuming that the maximum speed of the Indianapolis is 15 knots, and she passed the bell buoy at 4:33, and ran at this speed for four minutes, and then her engines were stopped for three minutes, I ask you how far she would travel until the engines were stopped?

A. One mile, one nautical mile.

Q. She would travel one nautical mile in the four minutes at the speed of 15 knots an hour?

A. Yes sir.

Q. Then if the point of collision was one and three quarters of a mile from the buoy, how far would the Indianapolis have to go, after her engines were stopped to reach the point of collision?

A. Three quarters of a mile.

Q. With headway gone after running 4 minutes at 15 knots, could she reach this point of collision, between the point 4:37 and 4:40, in your opinion?

A. She could not.

Q. Now referring to libelant's exhibit "J". I will ask you whether you plotted the course on this exhibit of the different vessels?

A. I did.

Q. Now state from what you plotted the course of the Indiananoplis?

A. I plotted the course of the Indianapolis from the testimony given by Captain Penfield.

Q. What did you plot the course of the Kitsap from?

A. The course of the Kitsap was plotted from the testimony given by the captain and officers of the Kitsap, and also passengers.

Q. What did you plot the course of the Reliance from?

A. The course of the Reliance I plotted from statements made to me by the officers of the Reliance, Mr. Gazzam, Mr. Jackson, and statements made to me by the captain of the Reliance, Captain Anderson.

MR. BRONSON: I object as heresay.

Q. Have you heard the evidence of the witnesses that you have just named, other than the captain of the Reliance, as given here before the Commissioner?

A. I have.

Q. I will ask you whatever statements were made to you and on which you base your diagram here of the course of the Reliance, agree with the testimony which you heard given before the Commissioner?

A. It does.

MR. BRONSON: I renew my objection to the testimony of the witness relative to this diagram exhibit "J", based upon these statements, and we reserve the right to move to disregard this exhibit at the proper time, upon the ground that it is apparently made from statements of witnesses who as shown in their evidence in this case, were not qualified to give any exact mathematical or geographic locations from any known observations made at the time when they purported to have observed the conditions, and that their statements showed at the time that they did not know what the course of either the Reliance or Kitsap was from any examination of the compass, or from the observations of the surrounding landmarks which were hidden by the fog.

Q. I will ask you whether or not the courses as you plotted them on this exhibit are the correct courses according to the evidence given?

A. It is. The courses are.

Q. I will ask you whether or not these courses shown on this exhibit are in accordance with your experience or professional knowledge?

A. The courses given, that is the Kitsap and the Reliance, are such as I would expect of vessels this size and type to follow under the conditions given, and are such as the Kitsap and Reliance will follow under the conditions

given as I have personally observed and taken data of the Kitsap under the conditions given and also of the Reliance.

MR. BRONSON: I renew our objection, upon the grounds already stated, and upon the ground that no matter what observations this witness may have made, or what experiments he may have made with vessels upon this course since that time, such observations would be wholly useless in determining the actual conditions at that time, which could only be arrived at by an observation of the course of the vessels as to the surrounding shores or else an observation of the compass as the vessels proceeded.

Q. In plotting this course have you taken into consideration the evidence to the effect that the tide was ebbing at this time?

A. I have.

Q. And also the evidence that there was no wind at that time?

A. No wind.

Q. Now referring to libelant's exhibit "M", the government chart, what is the distance from the bell buoy to the point of collision?

A. The distance from the buoy to the position where the course of the Indianapolis and the course of the Kitsap, is slightly over one and three fourths nautical miles.

Q. If the Indianapolis passed the bell buoy at 4:33, what was her average speed from the bell buoy to this point of collision as shown on this chart exhibit "M"?

A. Fifteen knots.

Q. How many statute miles?

A. About 17 statute miles.

Q. If the Kitsap backed away from the south side of pier 4 at 4:35, and followed the track shown in black on this exhibit, and the collision took place at 4:40, what was the average speed of the Kitsap from the point at pier 5 to the point of collision?

A. The average speed is about three and four tenths knots an hour or 3.9 statute miles.

Q. If the Indianapolis was further to the northward of the bell buoy than shown on this exhibit, and as shown

on Claimant's exhibit 4, would the speed of the Kitsap have been greater or less in reaching the point of collision?

A. If the Indianapolis had been further from the buoy, and rounding the buoy, and had then followed the course given by Captain Penfield, north east by east quarter east, the course of the Indianapolis would be northward of that shown, the point of collision or the point where the two courses intersect would be northward of the position shown, and the speed of the Kitsap would be correspondingly increased.

Q. About how much would that be increased?

A. Depends altogether on how far the Indianapolis was from the bell buoy.

Q. Captain Penfield testified that shortly before the collision, that in his judgment he was just about the right place to haul in for the dock. Assuming that the right place to haul into the dock is a quarter of a knot from the dock, how far is this point from the bell buoy?

MR. BRONSON: I object as incompetent, irrelevant and immaterial. The assumption is not material evidence in this case and is not established as one of the evidenciary facts in the case.

Q. Also taking into consideration in giving your answer, that Captain Penfield testified that he ran seven minutes—that he ordinarily runs seven minutes at full speed to reach the proper place to turn into the dock?

A. Running seven minutes full speed—

MR. BRONSON: I further object on the ground that the evidence in this case shows that the course steered by the Indianapolis in a fog is not the same as the course steered in clear weather.

A. Taking into consideration the evidence that you have referred to, the average speed of the Indianapolis, from the bell buoy to the point referred to, would be 15 knots an hour.

Q. You testified, I believe, Mr. Evans, that you examined the Kitsap after she was raised?

A. I did.

Q. At different times. I will call your attention to the

photographs that have been introduced in evidence by the libellant, libellant's exhibits "E", "F", "G" and "H", and ask you to state whether or not these photographs correctly show the condition of Kitsap at the different times which the evidence shows they were taken?

A. I would like to have the times that these were taken as shown in the evidence?

Q. The evidence shows that exhibits "E" and "F" of the hull, were taken very soon after the vessel was raised, at West Seattle.

A. E. and F. correctly show the damage to the main structure of the hull, as I saw it on or about February 4th.

Q. And where was she lying at that time?

A. West Seattle.

Q. Was that before or after she was towed to the dry dock in the East Waterway?

A. It was before.

Q. Do you know about how long it was after she was raised?

A. I do not know. I know that I examined her in dock about February 8th, about four days later.

Q. You do not know how long she had been out of the water at the time these photographs were taken?

A. No.

Q. Or approximately how long?

A. No, I do not.

Q. Now referring to exhibits G and H, taken in the dry dock, state whether or not these correctly show the condition of the ship at that time, as you saw it?

A. The exhibits G and H correctly show the damage to the main hull as I saw the Kitsap on the dry dock about February 8th.

Q. Mr. Evans, Mr. Walker, one of Claimant's witnesses, testified that the approximate weight of the Indianapolis was 15 to 16 hundred tons. State whether or not, in your opinion, that is correct?

A. It is not.

MR. BRONSON: I object on the ground that it has

not been shown that the witness is qualified, or knows anything about it. He may be but it does not appear now.

Q. I will ask you whether or not you have any data upon which to base your opinion as to the weight of the Indianapolis?

A. I have data on which I can base an opinion very easily, by taking the dimensions of the Indianapolis as given in Lloyd's Register, and applying a block coefficient, which any well qualified Naval expert will know approximately what it is, that I can calculate very closely the displacement of the Indianapolis, and upon making such calculations I find that the displacement or the weight—

MR. BRONSON: I renew my objection.

Q. Have you taken this data and made these calculations?

A. I have. And it is very much less.

Q. What is the approximate weight of the Indianapolis?

A. I do not remember exactly what the calculations were that I made, I made them sometime ago, but the weight of the Indianapolis drawing about six feet forward and ten feet aft, is 491 tons.

MR. BRONSON: I renew my objection and move to strike the answer. It is not shown to have been based upon any knowledge of the facts or upon the facts in evidence in this case which shows the witness is qualified to make the estimate.

Q. You have seen the Indianapolis?

A. Yes sir, I have.

Q. Very often?

A. No, not very often. I went down to look at her two or three times on the dock. I looked at her once when she was lying up.

Q. I will ask you whether or not from your experience as a Naval architect and construction of vessels, from what you have seen of the Indianapolis you can tell whether her weight would be any where near 15 or 16 hundred tons?

A. No sir, it would not.

Q. You mean that it would not be that weight?

A. No, it would not be that weight.

Q. You could tell from looking at her whether or not she would be anywhere near that?

A. Looking at her and getting the dimensions out of Lloyd's Register, I can.

Q. Could you tell whether it would be 491 tons or 1500 tons or 1600 tons, from your observation of the vessel, without taking the dimensions shown in Lloyd's?

A. Yes, I could, but I would not attempt to make any definite figure without getting the dimensions of the vessel.

Q. You would not attempt to make a definite estimate of the weight, but could you tell approximately or within a thousand tons?

A. I think I could.

Q. And from your experience as a Naval constructor, and in the construction of vessels, and from what you have seen of the Indianapolis herself, would you from that alone say that the weight of the Indianapolis was 15 or 16 hundred tons?

A. No, I would not.

Q. Would you say that it was a thousand tons?

A. It is hard to answer that question, because I have the dimensions in my mind that I have used, and involuntarily I will consider these dimensions.

Q. Mr. Walker testified also that the weight of the Kitsap was five or six hundred tons. I will ask you whether or not in your opinion that is correct?

A. No, I do not.

Q. What, in your opinion, is the weight of the Kitsap?

A. I think it approximates about 125 or 150 tons. That is on a draft of about 3 feet forward and 6 feet aft.

Q. You have examined the Kitsap frequently?

A. Yes sir.

Q. Do you know what her usual draft is?

A. Taking that draft as I remember and making this estimate, and the statement made by Captain Hanson, I think it is in the evidence, when I used the 3 feet and the 6 feet—I would not know from the examination that I made

of the ship in the dock without paying particular attention to it but I did not pay particular attention to it.

Q. You base this calculation on the testimony of Captain Hanson as to her draft?

A. Yes sir.

Q. Now have you made any drawing of the damage that was sustained by the Kitsap?

A. I personally have not made the drawing. I had a drawing made by a draftsman, Mr. A. L. Lawley, under my directions, which I hand you.

Q. Have you checked this draft to know whether or not it is correct?

A. I have personally checked on the Kitsap this drawing and I know it to be correct in all essential parts.

Q. Now you may go ahead and explain what the different marks and words and so on on this drawing are, so that the Court will understand fully.

MR. BRONSON: The Claimant at this time objects to the witness testifying from a drawing not made by him, and object to its introduction in evidence, if it is to be offered in evidence, upon the ground that it is not shown that the witness is qualified, from the drawing itself, or from his statement with reference to the person by whom it was made, testifying about it, and we want to reserve the right to object to it upon the examination of the witness as to his qualifications, etc.

Q. I understood you to say that you had checked the drawing with the damage of the vessel itself?

A. I have spent a great deal of time at a drawing board making drawings myself, and I have personally checked on the ship this drawing, and I know it to be correct, know that it correctly represents the damage to the main structure of the Kitsap in all essential parts. The drawing is a plan view looking down on the deck. The deck is shown in full, that is the deck planking is not ligned in. The break in the deck is shown by the deck line a—b, c—d, and following that around on the right hand side of the drawing. On the left hand side of the drawing is shown

where it is marked "Guard", "Shelf", "Stringers". In a plane below the one in which the deck is shown is the planking. The planking, that is the bottom planking, is lined in so that it can be distinguished from the deck. The damage shown is from two causes, one of which is the collision proper and the other of which was made by the cables in raising. It will be noted in the vicinity of the large F in pencil and large G in pencil, the G being about the middle of the drawing there is a break in the deck which is caused by the cable, this cable bringing up on the oil tank, with the marks of the cable on the tank. On the left hand side of the drawing, just below the word "Planking", with three arrows running from it, there is a little "E" in pencil. Extending from the letter "E" to the left the break in the planking is caused by the cable. The bow of the vessel in collision with the Kitsap, the lower portion of this bow ended in the bottom planking about at the point "E", while the upper portion of the bow or stem in the plane of the deck, extended over to the point small "f", which is just below a jagged line marked "Dent", which is on the oil tank. The damage to the bottom planking is considerably below the plane of the deck, and it will be noted at the point marked "H" in pencil. It is marked on the drawing that this point is six feet six inches below the top of the deck. The point marked "Dent" on the lefthand end of the oil tank is where the stem of the vessel brought up on the oil tank. The various dimensions are given and clearly marked. The drawing shows only the port side of the vessel in the immediate proximity to the damage, and the drawing is on a scale of an inch equaling a foot.

Q. Does it show all the damage on that side?

A. It shows all that can be shown in a plane view of the hull proper.

Q. Now Mr. Evans, from your examination of the Kitsap, after she was raised, and from the evidence that has been introduced in this case, I will ask you to state, how, in your opinion, the collision took place?

MR. BRONSON: I object to that question as calling for a conclusion of the witness upon a state of facts wholly

problematical, and dependent upon facts not within the knowledge of the witness or testified to or made part of the record in this case, and simply his conclusion, in any event.

Q. I will ask you to limit your testimony to the conclusions drawn from the evidence in the case, including the photographs, which you have testified correctly show the damage to the Kitsap. In other words, I do not want you to go outside of the evidence that is before the Court?

A. The two vessels were approaching each other on courses which were approximately 45° to each other. As they approached each other, and the point where these two courses intersect, the Indianapolis had the Kitsap on her own star-board side. When the Indianapolis' stem came in contact with the guard of the Kitsap, there was considerable resistance to penetration. This guard is of iron bark, heavy, tough, resisting wood, and at the first moment the guard was not penetrated.

Q. Just a moment right there, is that shown in the photographs?

A. It is shown in the photographs.

Q. The fact that it was not penetrated at first?

A. Yes sir. By taking the photograph exhibit "E", there will be seen on the guard where a rope hangs up and down across the guard, and the marking to the left of this rope shows where the stem of the Indianapolis first struck the guard, and it will be seen from these photographs that penetration did not take place there, but that there was a sliding motion along the guard, and the penetration took place to the right of this point, the guard, however, being mashed up. The Kitsap when struck by the Indianapolis, at some considerable distance forward of her center of gravity, swung around, the bow being shoved around. Not only does the photograph show this, and my professional experience, but it is also in evidence from witnesses both for the Claimant and libellant, that the bow of the Kitsap did swing around. The Indianapolis stem advancing faster than the bow swung, penetrated the guard, the shelf, the stringers and the planking as shown in the photograph exhibit "E", and also as

shown in the drawing marked "N" for identification, until the striking vessel was brought to rest. The angle of the cut shown on libellant's exhibit "N" for identification, the drawing of the lines a—b, c—d, and also e—f, do not correctly represent the angles between the keels of these two vessels at the time the Indianapolis struck the Kitsap. The angles shown by the cut on the lines a—b and c—d being smaller than the angles that existed between the keels of the vessel, this being due to the swinging motion of the bow of the Kitsap. This can clearly be shown by taking two models representing the two vessels, the Kitsap and the Indianapolis. I have here two models, one marked Kitsap, which is made in plane of the deck and correctly represents that on a scale of an eighth of an inch equaling a foot, and another model which shows a ship-shaped form of 180 feet length, which for this purpose I have marked Indianapolis. By placing on the small model a pin through a hole which is approximately at the center of gravity of the Kitsap, and placing the Indianapolis model at an angle of approximately 45°, marking the point where the bow touches the small model, then assuming that the Kitsap swings to the right, the Kitsap's bow swinging to the right while the model of the Indianapolis advances in line of her keel directly ahead, it will be seen that the first point where the bow of the Indianapolis touched the model, is moved considerably forward relative to the stem of the Indianapolis, the Indianapolis advancing in to the middle of the Kitsap to any point, and joining by a line the point where she first struck and started to cut, with the last point, it can easily be seen that the angle is very much smaller than the angle which exists between the keels of the two vessels. This I have done graphically on this piece of paper.

MR. MERRITT: I ask to have the paper just referred to by the witness marked "O", for identification. I also offer in evidence identifications "M" and "N".

MR. BRONSON: I object to the offers of "M" and "N" on the grounds stated when the witness was first interrogated with reference to it.

Chart marked libelant's exhibit "M", and tracing marked exhibit "N", filed and returned herewith.

MR. MERRITT: I offer identification "O" in evidence, and also the two models.

MR. BRONSON: I object to identification on "O" on the ground that the same is wholly theoretical and wholly technical and problematical, and that all of the language recited upon it is simply an argument of the expert witness as to the probabilities of this accident, and they are not a proper part of the evidence to be offered by the libelant in this case, and I object to all of these documents offered today and the testimony of this witness, on the ground that it is not proper rebuttal. In other words I think the libelant is trying to prove its case over again.

Identification "O" marked libelant's exhibit "O"; the models marked respectively "P" and "Q", filed and returned herewith.

A. In exhibit "O" there is a line running up and down the paper marked "Vessel B." On the upper left hand corner there is a vessel marked "H", striking vessel "B" at an angle of 45° . If vessel "B" is at rest and is struck by vessel "H" forward of the center of gravity and swings away while being cut, the resulting angle of cut on "B" will be less than the angle between vessel "H" and vessel "B". In the diagram vessel "B" is at rest and is struck by "H" 35 feet forward of the center of gravity. While "H" cuts in "B" the latter swings off 20° . The point "a" on vessel "B" swings to a point a', while vessel "H" continues on her course cutting to a point a''. Then the line a'—a'' represents the cut, and in this case this is an angle of 11° with the keel of "B". If "B" now ceases to swing owing to planking and the structure of the vessel not offering sufficient resistance, the angle of the cut becomes the course of vessel "H". If "H" when striking also swings some to starboard, the angle of the cut is further reduced. From an examination of exhibit "N" I find three distinct stages of the angle of cut in the plane of the deck. On the line a—b, which is the line of cut in the plane of the deck, this is an

angle with the keel of the Kitsap of about 7° , and extends about a foot and a half. The angle then changes and that line, c—d representing the cut of the plane of the deck is 16° , a distance of about 5 feet. The angle then changes abruptly and becomes e—f, which is an angle of 59° with the keel of the Kitsap. The Indianapolis' stem striking at about the point a on the guard, the Kitsap swings rapidly to starboard, and the Indianapolis advances at a slightly greater speed than the bow swings away, making a cut which is at an angle very much less than the one between the two vessels. That is, during the period that the Indianapolis' stem is cutting through the face of the guard to the guard proper which are heavy, resisting timbers. During the period of the cut shown by c—d the Indianapolis is cutting through less resisting timbers, but still offering considerable resistance, it being the shelf and the stringers. At the point "d" there is an abrupt and great change in the angle of the cut, going from 16° to 59° , and it is exactly at this point that the stem of the Indianapolis has finished cutting through the heavy resisting timbers, and strikes the bottom planking which offers little resistance to cutting or crushing, and it crumples up, not offering sufficient resistance to swing the bow of the Kitsap away from the stem of the Indianapolis. The Indianapolis then cuts in at an angle which at that time approximately correctly represents the angle existing between the keels of the two vessels. The stem of the Indianapolis ending up on the deck at the point marked "F", which is just below the point marked "Dent" on the oil tank.

Q. I will ask you, Mr. Evans, to state what, in your opinion, was the relative speed of the two vessels, judging from the evidence in this case?

MR. BRONSON: I object as simply calling for a conclusion of the witness, and that it is wholly problematical, and calling for his estimate upon a matter which is really for the decision of the Court.

A. In making any estimate of the speed of the Indianapolis, it must be taken into consideration that in addition to the resistance offered to a vessel advancing through the

water, the usual resistance offered to a vessel from the water, there was in this case two elements, which tended to stop the Indianapolis in her progress. One of these was the engines of the Indianapolis backing hard. The other was the resistance that the structure of the Kitsap offered to her advance. In addition, it must be considered that the Kitsap was not rigid in the water, and that the bow of the Kitsap swung away from the stem of the Indianapolis, and that the Indianapolis therefore necessarily advanced more distance than shown by the actual cut in the structure of the Kitsap. With these various elements, it is impossible to make any accurate calculations of the speed that the Indianapolis was going at the moment she struck the guard of the Kitsap. I have carefully considered this matter, and judging from my experience, it is my opinion that the Indianapolis was going at a speed of not less than six miles an hour at the instant that her stem touched the guard of the Kitsap. Regarding the speed of the Kitsap, judging from the damage to the Kitsap, it is my opinion that the Kitsap had practically no movement in the water along the line of her keel at the instant of collision. It is entirely possible that she may have had a very slight movement, but this amounted to practically nothing.

Q. You have ready the evidence, have you not, relative to the damage to the bow of the Indianapolis?

A. I have.

Q. From that evidence state how, in your opinion, this damage was caused?

A. I have here a blueprint sketch—

MR. BRONSON: I object on the ground that it is simply supposition and guesses by the witness as to the occurrences, and is not based on any actual experience at all and is wholly problematical, and calling for his conclusion upon a matter to be determined by the Court.

MR. MERRITT: I desire to have the blueprint referred to by the witness marked "R" for identification.

(Blueprint so marked.)

A. On exhibit "R" there is shown plan of the Kitsap

deck, guard, shelf and stringers in the vicinity of the damage. There is shown a ship-shaped form marked "Bow of Indianapolis," advancing into the structure of the Kitsap. This is advancing at an angle of 45° to the keel of the Kitsap. For every foot that the stem of the Indianapolis advanced into the structure of the Kitsap in the direction of her keel, the motion can be resolved into two separate parts, one of which is a right angle to the keel of the Kitsap and another of which is parallel to the keel of the Kitsap and in the direction of the stern. For every foot that the stem of the Indianapolis advanced in the direction in which she is going, that stem will advance seven-tenths of a foot aft, that is aft on the Kitsap, towards the Kitsap's stern. From the shape of the bow of the Indianapolis, the cut into the timbers of the Kitsap on the port side is at a sharp angle, and the timbers are splintered up and can be easily shoved aside, as can be seen from the photograph exhibit "E". On the starboard side of the bow of the Indianapolis, owing to the shape of the Indianapolis' bow, the cut is approximately at right angles to the heavy fore-and-aft timbers, consisting of the guard, stringers and the shelf. As these timbers are broken away to a point where they are supported by a beam, a frame and a knee, for example, they offer considerable resistance in the fore and aft direction, that is fore and aft in reference to the Kitsap, and will tend to crush in the bow plating of the Indianapolis on the starboard side, and this crushing in transmitted by the breasthook and frame, will tend to bend out the plating on the port side of the Indianapolis. This motion will also tend to bend the whole section, the whole portion of the Indianapolis' bow, including the stem, to port, and that is the damage I would expect to find on the Indianapolis.

Q. For every foot that the Indianapolis advanced into the Kitsap, how far would she advance at right angles to the keel of the Kitsap?

A. Seven tenths of a foot. That seven tenths is a very close approximation, it is .707.

Q. Now, in this drawing, have you undertaken to draw

the bow of the vessel entering the other vessel exactly on the scale of the Indianapolis?

A. Oh no, I have not. This is simply to illustrate it.

Q. Mr. Evans, several of the witnesses for the Claimant, have testified that in their opinion the Kitsap impaled herself on the bow of the Indianapolis. I will ask you to state whether or not, in your opinion, if the Indianapolis was at rest at the time of the collision, it was possible for the Kitsap to have impaled herself on the bow of the Indianapolis and caused the damage which was caused to the Kitsap?

A. If by impaling is meant that the Kitsap ran on the stem of the Indianapolis, that is absolutely impossible.

Q. State whether you also considered the fact that the tide was ebbing in the direction in which the Kitsap was then going, the general direction in which she was going and that there was no wind?

A. In giving my previous answer it was based on the fact that there was no wind and that the tide was ebbing. I can best illustrate this by taking the two models in evidence, and placing them on a piece of paper, which I have done, with the stem of the Indianapolis against the Kitsap's guard at approximately 45°, marking on the model Kitsap where this point strikes, then moving the Kitsap's model forward in the direction of her keel, the movement which represents the extent of the damage on the Kitsap in a fore and aft direction, leaving the stem of the Indianapolis stationary, moving the model forward this distance, leaving the stem of the Indianapolis stationary will show the amount that the Indianapolis' stem advances in to the structure of the Kitsap, which is marked on the piece of paper "end of cut, second position of Kitsap." The striking point being marked also. The line joining the striking point and the end of cut would be under these conditions the line of the cut. Under these conditions the maximum amount that the Indianapolis' stem can enter the structure of the Kitsap is the difference between the beams of the vessel at the striking point and at the point marked end of cut. This difference is

one foot and one inch, measured at right angles to the Kitsap's keel. The diagonal distance is about two feet. In other words, if the accident had taken place in this way, the greatest amount that the Indianapolis would have advanced into the Kitsap would be, namely, one foot and one inch, while as a matter of fact we know it is very much greater than this. We also know from the plans in evidence, "N", that the line of cut is entirely different from that which is shown on this sketch that I have now made. This is based on the assumption that the Kitsap does not swing away from the stem of the Indianapolis. It is also based on the assumption that the Indianapolis does not move back in response to her backing of the engines at full speed. If the Kitsap swung away on this striking, as witnesses both for the Claimant and Libelant have testified, the damage to the Kitsap would be less than shown. In my opinion, if the Kitsap had swung away at striking, as described, the damage would have amounted to nothing more than a scraping along the exposed guard.

Q. I will ask you whether or not, in your opinion, in view of the evidence in this case that the Kitsap did swing away from the Indianapolis at the time of the collision, and in view of the guard of the Kitsap, the Indianapolis would have entered the Kitsap at all?

A. No, I do not believe she would have entered it at all.

Q. Now, Mr. Walker and Mr. Rodgers, both witnesses for the Claimant, stated that if the damage to the Kitsap had been made by the stem of the Indianapolis cutting into the Kitsap, the Indianapolis' stem would have been set back. I will ask you to state whether or not that is correct, in your opinion?

A. To my mind there is no doubt whatever that the damage to the Kitsap was caused by the stem of the Indianapolis advancing into the structure. I cannot see how there can be any difference of opinion, because the cut on the Kitsap speaks for itself. The stem of the Indianapolis according to Rodgers' testimony, about an inch and a half by six or seven inches, of steel or iron. A bar of this kind, set

on edge, will resist a great deal in the line of its greatest dimension, while flat, it will not resist so much or nearly so much. The stem of the Indianapolis is on edge, and is reinforced by the bottom plating and the side plating, by the frame in the vicinity of the stem, and is designed and built to resist damage from forward. I would not expect a bow of this kind to be bent backward by cutting into a wooden structure, as shown was cut.

Q. You have read the evidence of the witnesses for the Claimant, as to the damage to the bow of the Indianapolis and the bending of the plates some six or seven feet back of the extreme bow. I will ask you whether or not, in your opinion, such damage could have been made to the Indianapolis, if the Kitsap had impaled herself, or struck the bow of the Indianapolis?

A. Under the conditions which I assumed in answer to the previous question, the maximum amount that the Indianapolis could enter the structure of the Kitsap would be two feet, so that there could be no bending for five or six feet from the stem. No bending of plates at a distance of five or six feet back from the stem.

Q. I will ask you whether or not, in your opinion, the damage caused to the Kitsap could have been caused, if the Indianapolis was at rest at the time of collision between the two vessels?

A. It could not.

MR. MERRITT: I offer this drawing, which has been identified as "S", in evidence.

MR. BRONSON: I object to this offer for the same reasons urged to the admission of exhibits "N" and "O".

Paper marked libellant's exhibit "S", filed and returned herewith.

At this time the hearing was adjourned until Monday, September 4, 1911, at 11 a. m.

Seattle, Washington, September 4, 1911.

Continuation of proceedings pursuant to adjournment.

PRESENT: Mr. Merritt, for the libellant.

Mr. Bronson, for the Claimant.

MR. H. A. EVANS, on the stand for further

DIRECT EXAMINATION.

Q. (Mr. Merritt). Referring, Mr. Evans, to libelant's exhibit "J", I notice here a curved line from the point which you have marked as point of collision. There is nothing on the chart to explain that. Will you explain what is meant by that?

A. That curved line, from the point marked point of collision being approximately the arc of a circle, is the course followed by the Kitsap and Indianapolis when the two were together, where the Indianapolis' stem was placed against the Kitsap, approximately in the cut, and the Indianapolis went ahead slow with a helm hard aport. This curve is a close approximation of what I believe would be the course of the two vessels under these conditions.

MR. BRONSON: I move to strike the answer out as wholly problematical and speculative on the part of the witness.

Q. I will ask you whether or not that course as drawn there was based upon the testimony of Captain Penfield and the other witnesses as to what the Indianapolis did after she came back against the Kitsap?

A. It is.

Q. You remember Captain Penfield's testimony to the effect that in his opinion, going ahead with the bow of the Indianapolis against the Kitsap, at the point of collision with the helm hard aport, under dead slow speed, that it would just about hold the vessels against the ebb tide, and would not carry them very far, that it would just about stem the tide?

A. I remember that.

Q. State whether or not that opinion expressed by Captain Penfield is correct or not?

A. In my opinion it is not correct. In the first place the tide ebbing was about the same general direction as the keel of the Kitsap, that is it ran in about the same general direction as the course of the Kitsap.

MR. BRONSON: I move to strike the answer as wholly problematical and speculative. Nothing being in evidence as to what her speed was or whether she remained stationary, or how long she may have been turned, etc.

A. (Continuing) And the Indianapolis going ahead slowly with her helm hard aport, would go around in a circle a little bit larger in diameter than if she had nothing on her bow. And under these conditions she would shove the Kitsap around and turn the bow of the Kitsap in the direction almost opposite to that in which it was going when she was struck.

Q. In your opinion could the Kitsap under these conditions have sunk at the point where she was in collision?

A. She could not.

CROSS EXAMINATION:

Q. (Mr. Bronson). Mr. Evans, when did you first hear about this collision?

A. I saw something in the papers immediately after the collision. That was the first knowledge I had of it.

Q. Were you acquainted with Mr. Gazzam at that time?

A. I had met Mr. Gazzam at the Club and knew him by sight, but that was about all.

Q. When were you consulted about the case, about the matter of the collision?

A. I cannot give the exact date. It was somewhere about the first of February. the last of January or the first of February, somewhere along there.

Q. You were given to understand by Mr. Gazzam at that time that the collision was the result of negligence of the Indianapolis?

A. No, sir, I was not. It was a question at that time. Mr. Gazzam asked me to make—

Q. We will save a great deal of time, Mr. Evans, if you will just answer my questions, and any explanation you want to make can be made later. Did Mr. Gazzam give you to understand nothing about the supposed facts in the case?

A. At the time that Mr. Gazzam first consulted me, he asked me definitely to make some calculations, and at that

time gave me no statement regarding the negligence of any parties.

Q. Did he suggest to you at that time where the Kitsap was on her course, or give you any idea of that kind?

A. At this time—

Q. Answer yes or no?

A. The first time he did not.

Q. Or at any time previous to the first hearing of the evidence?

A. Yes sir, he did.

Q. He indicated to you, did he not, that the Kitsap had left her dock and was squared away on her course north of the Grand Trunk dock at the time of the collision, did he not, in substance?

A. You mean in the various conversations we have had?

Q. Yes.

A. Yes sir, he did.

Q. You were present, were you not, at all of the hearings in the taking of the libellant's evidence in this case in chief, were you not, or substantially?

A. Yes, I think so. I think I was present at all of them, without making a positive statement, I think I was at all of them.

Q. That extended over a month and a half or two months' time, different days during that time?

A. Yes sir.

Q. You have spent a great deal of time in preparing this case yourself, have you not?

A. That depends, when you say a great deal of time.

Q. Well, a good many days' time?

A. Yes sir. And in saying I prepared this case, Mr. Bronson, you mean the technical part of it, of course.

Q. You prepared virtually the questions to be propounded to yourself in this case, the technical form of question?

A. No, I cannot say that I did. I prepared a statement covering the technical side of this case, covering most of the technical points that had been brought out. This was

soon after I came back to Seattle, about two weeks ago. I had not heard the evidence which was given by the witnesses of the claimant, particularly what would be called the expert testimony of Mr. Walker, in which, of course I was particularly interested, being in the same line of business, and I took this up with counsel, Mr. Merritt, and he was very busy, his two partners being away and could not go over it with me, and he gave me all the transcript of the evidence, and asked me to go over it carefully and prepare him a statement covering all of the technical points in connection therewith, which I did.

Q. What I was getting at is this: the preparation of that part of the case has altogether been your work, practically?

A. Well, practically, I should say yes. There is some of it, of course that the attorney has done of his own, but practically.

Q. Are you in the direct employ of the United States government?

A. I am.

Q. Under salary?

A. I am.

Q. Mr. Evans, have you examined the compass of the Indianapolis?

A. No, I have not.

Q. You do not know what her variation is?

A. Variation?

Q. You do not know what her error is?

A. No, I do not know what her error is.

Q. You have assumed, have you not, as a matter of fact, Mr. Evans, that in case the Kitsap steered the course which would in effect draw a half circle in front of the known course of the Indianapolis, crossing the bows of the Indianapolis twice, that it would be a very gross error in navigation, have you not?

A. On whose part?

Q. On the part of the Kitsap, or her master. You have assumed that if she did so—

A. You have not given me the course of the Indianapolis, the known course of the Indianapolis—

Q. Well, you know enough about this case, and know what the course of the Kitsap was supposed to be as she left her dock?

A. Yes sir.

Q. And where bound?

A. Yes sir.

Q. And you know what the course of the Indianapolis was and where she was bound?

A. The foggy weather course of the Indianapolis?

Q. Either one, it does not make any difference, and that the Indianapolis was due according to her schedule. You know all these things, don't you?

A. Yes.

Q. Cannot you answer that question?

A. Now let me see: If she crosses the course twice, it would be a gross error of navigation?

Q. Yes.

A. I have not, as a matter of fact the course of the Kitsap—

Q. I did not ask you what the course was. I asked you if she did so, that that would have been a gross error in navigation?

A. I have assumed no such thing.

Q. Have you not laid out the defense in this case, Mr. Evans, to prove that the Kitsap did not do that thing?

A. I have not laid out any defense in this matter. I have attempted simply to show—

Q. You can answer the question yes or no.

A. I have not laid out any defense.

Q. You have no data of a scientific nature to go by, from which you can draw any course of the Kitsap, have you?

A. I have.

Q. You think you can draw the degree of curvature on a chart, as you have drawn it on libelant's exhibit "J", which course is marked, course of Kitsap and course of

Kitsap to Four Mile Rock, without knowing how hard her helm was over or how fast she was going, or the points of the compass at any point on her course, could you do that?

A. I could not.

Q. Then the course as drawn here is problematical, is it not?

A. It is not.

Q. Have you a knowledge of her speed?

A. I have a knowledge of her speed when she is going 60 to 65 revolutions.

Q. You mean that there has been evidence here that she was going at some certain speed?

A. There has been evidence here of the number of revolutions she was making on the engine.

Q. Do you remember the evidence to the effect that the master instructed the engineer to kick her ahead faster, or something of that kind?

A. I remember that the evidence shows that she was going 60 revolutions, and that the master instructed her to make it a little stronger; then she went 65 revolutions.

Q. Your recollection is that she went at 65 revolutions?

A. Yes sir.

Q. And that is based upon an absolute and definite number of revolutions?

A. 60 to 65.

Q. Do you know, of your own knowledge, what her speed would be, under these circumstances?

A. I can make a very close approximation to it.

Q. You were familiar with the vessel, were you?

A. I am.

Q. Were you before the accident.

A. No.

Q. Do you know how hard over her helm may have been?

A. I do not.

Q. Would that make any difference?

A. It would make a decided difference in the turn.

Q. Would the tide have anything to do with it?

A. It would. I took that into consideration.

Q. What was the state of the tide?

A. Taken from the evidence, one mile an hour.

Q. Do you remember the evidence of one of the witnesses for the libelant to the effect that her whistles were heard about two and a half points off the Grand Trunk dock and that two or three minutes later, the sound of the collision was heard in the same direction two and a half points off the Grand Trunk dock?

A. I suppose you are referring to Captain Hill. I do not remember that exact wording. I remember that Captain Hill stated that he could not give the times very accurately. I do not remember that.

Q. Well, supposing that the evidence were to that effect, could she have been describing a course such as you have laid out, if that were true?

A. By looking at the chart "J", and placing a straight-edge—

Q. You can answer the question yes or no and then explain your answer fully.

A. Yes sir.

Q. What speed would you give the Kitsap in order to arrive at that result?

A. Do you want me to take two minutes or three minutes?

Q. Two minutes first, figure both ways.

A. In two minutes—taking off the blueprint chart approximately, without protractors, the speed would be five miles an hour, an average speed. At three minutes the speed would be about three and a half miles an hour, average speed.

Q. Now what speed have you given the Kitsap in the map you have drawn here, "J"?

A. That is, taken to the point of collision as marked on here, the speed is 3.4 knots or 3.9 miles an hour, taken from the point of starting off pier 5.

Q. That is to say that is the speed which you gave the Kitsap in figuring this exhibit "J"?

A. No, it is not the speed I gave.

Q. Well, what speed did you calculate?

A. I did not calculate the speed. It is the speed taken off the chart from the point that the course is given by Captain Penfield, and the course of the Kitsap as I have laid it down where they intersect. That is the average speed. Part of that is going against the tide, while part of it is going with the tide.

Q. But I still call for an answer to the question: What speed have you computed that the Kitsap was making up to this point here on the chart which you drew, exhibit "J"?

A. The speed is 3.4 knots.

Q. Or 3.9 miles.

A. 3.9 average speed in miles.

Q. Now if, as a matter of fact the Kitsap was going six miles an hour, if she was going six miles an hour she could not have traveled the course which you have marked here, unless you went further south?

A. Oh yes she could. She could have traveled further this way the collision would be further to the northward.

Q. How much further northward, if she was going six miles an hour?

A. Do you mean average?

Q. No, I do not mean to take the averages.

A. I cannot give it unless I do that.

Q. Where would she be at the time one minute, we will take it at an average, and we will make it one minute less than the time you figured. The testimony of the master of the Kitsap was that he had her engines stopped a minute, is not that right, Mr. Merritt?

A. Taking three minutes instead of four?

Q. Yes.

A. Taking out the minute referred to by counsel, and that she ran at a speed of six miles an hour for three minutes, the Kitsap would then be, and the point of collision would be at the point marked X, which is just under the "F" of the "Four" in the course marked as course of Kitsap to Four Mile Rock.

Q. And of course for any additional speed that was

given to her, she would have been on a supposedly straight-away course north?

A. Straight-away course on this line, it is not directly north.

Q. An extension of the line marked Course of Kitsap?

A. Yes sir.

Q. Will you now tell me how far it is from the X which you have marked on the chart to the end of the curved line marked course of Indianapolis?

A. The end of the curved line being the end of the circle after they were in contact.

Q. If you have it marked on there in figures?

A. Nine hundred feet.

Q. Now, one other question I forgot to ask you. In case the Kitsap was squared away on her course at the time when the sound of her whistle was described by a witness as being two and a half points off the Grand Trunk dock, could she have maintained the course which you have outlined here, if the sound of the collision was also two and a half points off the Grand Trunk dock?

A. In case the Kitsap had squared away on the course when the whistle was heard two and a half points off here, and then—

Q. In two or three minutes later the sound of the collision was heard two and a half points off the Grand Trunk dock, could she have maintained the course that you have marked here?

A. She could have maintained the course, but she would have been at the point—

Q. Would not the sound of her whistle be coming constantly from a more northerly point under these circumstances?

A. Accurately taken from the chart it would, but we know there would not be very much difference, the sound is very difficult to distinguish.

Q. Sounds are very deceptive in the fog?

A. Yes sir.

Q. Do you mean to say that you cannot rely on them in locating whistles and sounds like collisions?

A. You cannot rely on them accurately, to be exact.

Q. Then if witnesses testified that they heard the sound of collision off the Grand Trunk dock, they may have been mistaken as to the actual point of collision?

A. If they attempted to define it with exactness, they may.

Q. Do you remember of making any marks on this chart, Claimant's exhibit 4? I do not think you did.

A. No, I have made no marks on that chart at all.

Q. Do you notice this course marked northeast by east half east magnetic?

A. I do.

Q. Now that is the course drawn out here by Captain Penfield?

A. Yes sir.

Q. In all of your evidence which you gave on Friday, you assumed that this course was northeast by east quarter east?

A. No.

Q. You are referring to the figures in the record where it shows in his testimony he called this northeast by east one quarter east?

A. No. He said he steered the course northeast by east quarter east.

Q. I say you are referring to his verbal description of the course which is drawn on the chart here?

A. Just in one place he stated—

Q. You were taking a technical advantage of an error in description?

A. Most decidedly I was not.

Q. Did you understand that all of the marks which were made upon here, had been measured out by Captain Penfield, to be exact, or were simply an approximate illustration on this chart?

A. I understood them to be the distances which he had run at these various points.

Q. You did not understand that these marks had been measured on this chart?

A. I did, because one is marked one and a quarter miles.

Q. Did you understand that all these had been measured? Did not you see him make a mark right here on the chart when he was giving his evidence?

A. No.

Q. You saw the mark "Ind"?

A. I saw you mark "Ind", but the figure was already there.

Q. You did not understand, Mr. Evans, that all of these marks were going to be accurately measured out marks?

A. I understood them to be.

Q. As distinguished from illustrations of the general course and the time that he had run up to the point X?

A. I understood that to be the place that he believed the ship to be at the various times mentioned in his testimony.

Q. I understand in one sense, but did you understand that they were meant to be exact measurements on the scale of this chart?

A. I could not tell what was in Captain Penfield's mind.

Q. Did you understand that?

A. Yes sir, I did.

Q. And I understand that you did not know what the error in the compass of the Indianapolis is?

A. I do not.

Q. You gave an estimate, I think, of the speed of the Kitsap as 3 and three-quarter miles or knots?

A. I did not give any estimate of three and three quarters.

Q. What was your estimate?

A. I think it is 3.4.

Q. You have read the evidence of the master and engineer of the Kitsap, haven't you?

A. Yes sir, I have.

Q. Is it your opinion that they are in error in that she was not going as fast as they said she was?

A. I think they were giving what they believed to be approximately the speed, I believe the statements they made

are correct approximately. The 3.4 speed is of the time based on the speed actually taken off of the exhibit, libelant's exhibit "J", which is taken from the point of intersection of these two courses. Now if this course of the Indianapolis was further to the northward than shows on this chart, this speed 3.4 as taken off here would be greater by the amount that the course of the Indianapolis was north of the one given by Captain Penfield.

Q. You have marked this course here north on exhibit "J" and you have marked the course here, not as drawn by Captain Penfield on the chart, but as designated in the transcript of his evidence, which I have not had a chance to check up, northeast by east quarter east?

A. Yes, sir.

Q. Then, if the course of the Indianapolis was northeast by east half east, or five eighths east, the speed of the Kitsap would still be less than 3.4?

A. In such a course as you describe the two courses would not intersect.

Q. That would be true, would it not?

A. No, it would not.

Q. It would be true that the speed of the Kitsap would be less than that because we know that they did intersect?

A. I do not quite follow you.

Q. You know there was a collision?

A. Yes sir.

Q. Now if the course of the Indianapolis was on a course diverging more to the southward than the course which you have drawn upon exhibit "J", according to your theory of it, the Kitsap, if she had collided with her as she did, would have had to go more slowly than 3.4 knots an hour?

A. She would.

Q. Unless she went further south?

MR. MERRITT: I object to this on the ground that the evidence of the claimant is positive that the course of the Indianapolis was northeast by east quarter east from the bell buoy.

A. If she went further south it would change the course

entirely, and it would be impossible to give any definite answer to that, unless a course is plotted further south of the Kitsap than you indicated.

Q. Now Mr. Evans, are you fairly—I take it that you are fairly careful in your method, but are you fairly accurate in your estimate of the weight of the Indianapolis and the Kitsap?

A. I think I am very accurate in it.

Q. In other words you are willing to let that stand at about 491 tons for the Indianapolis and about 125 for the Kitsap?

A. Yes, 125 or 150 tons for the Kitsap.

Q. The same proportion would exist between the two vessels at 1500 tons and 500 tons, it would be about a third, and the 491 and the 125 or 150, would be about the same proportion?

A. Roughly the same thing.

Q. Upon which of these exhibits, Mr. Evans, did you call attention to the mark of the guard on the Kitsap where the Indianapolis struck?

A. On exhibit "E".

Q. Where is the mark?

A. Just to the left of the rope.

Q. And that in your opinion, is where the stem of the Indianapolis first struck her?

A. Yes sir, it is.

Q. Approximately how far is that from the break of the chock—is that the chock there?

A. I would not attempt to mark it on there? It is about two feet.

Q. Your theory is that the stem of the Indianapolis slid about two feet on the guard of the Kitsap before she penetrated and broke through?

A. She was crashing in all the time, the guard is actually crushed in, is reduced in thickness, but before it actually cut in it is about 2 feet.

Q. If the Kitsap did strike the stem of the Indianapolis a glancing blow, I say if she did, that same thing might happen, might it not?

A. No, not that way.

Q. Without prejudicing the case or assuming the facts as your principal wants them to be, but just freeing our minds from any bias for the time being, it would be possible, would it not, for the Kitsap to strike the Indianapolis in such a way as to produce that same effect?

MR. MERRITT: I object to the question.

A. I do not make my answers on professional matters where my professional reputation is at stake, on what my principal wants.

MR. BRONSON: But we are all prejudiced in this world.

MR. MERRITT: I object to the question on the ground that it assumes he has a principal in the case that wants anything.

Q. Well, I will ask the question, would it not be possible for the Kitsap to be moving through the water in such a way as to strike the bow of the Indianapolis and to produce the movement and the effect which you have described up to this point, up to the point of breakage?

A. If the Kitsap was not swinging, it is possible.

Q. Does not the evidence which you have given in this case with reference to the form of the penetration and the actual point of collision, assume that the Kitsap was not moving forward?

A. It does not. The evidence I have given that there was a possibility that the Kitsap might have been moving forward slightly, and I have fully considered this in forming an opinion on this subject.

Q. Did you assume in forming an opinion on that subject that she was moving forward or that she simply might be?

A. At one time in working this out I assumed that she was moving forward, took that as a primary assumption that she was moving forward.

Q. You were retained in this case, were you not, Mr. Evans, before you had formed any opinion as to the merits of the collision?

A. I was asked by Mr. Gazzam to take up the technical points in this case before I formed any opinion as to the merit of the matter.

Q. No matter how the result you did arrive at, Mr. Evans, is not your evidence here at the present time based upon the admission that the Indianapolis was the colliding object, or the principal colliding object?

A. From my investigation I figure the Indianapolis as the principal colliding object, and I so expressed it in my direct testimony.

Q. Mr. Evans, referring to Claimant's exhibit 4 and libellant's exhibit "J", as far as the charts themselves are concerned, they are not laid out upon the same course, are they?

A. No. The Indianapolis' curve is not laid out the same.

Q. You did not lay out her course on exhibit "J" to conform to the course laid out on exhibit "4"?

A. No.

Q. Nor did you take into account any other than a true magnetic course in all of the evidence that you gave with reference to the distances of the run by the Indianapolis and the points of collision, etc.?

A. I took into account only the true magnetic course because that is what the witness stated.

Q. In other words you did not take into account any other course of the Indianapolis which may have been laid on the error of her own compass?

A. I could not, because it is marked there—

Q. You did not?

A. No, I did not.

Q. Is it a fact, Mr. Evans, that in case of a collision between the bow of one vessel and another part of the hull of another vessel than the stem or bow, that the further the colliding bow enters the hull of the other vessel the more resistance will follow from the fact that the stem of the colliding vessel might cut in where the sides of the bow of the colliding vessel as they broaden out, would offer more and more resistance?

A. The sharp stem will cut in quicker than later on the bow will cut in, because one is sharp object entering, while the other is a bluff object entering.

Q. Did you assume in the various computations you made upon the course of the Indianapolis, that Captain Penfield ran the Indianapolis after he cut off full speed at half speed?

A. I do not think it comes into the computations, but I certainly considered the whole thing that he did run half speed after full speed.

Q. You based your computations as to some of the measurements there upon a half speed after the full speed?

A. The only case that I based that on, that I can remember now, is when I was giving an estimate of the speed of the Indianapolis after he slowed. There is no computation that I can remember of where I have taken in at all that question and him running at half speed, other than the one I have given.

Q. Did not you give a computation of how fast he ran between X and this perpendicular line across the course?

A. I did, but that has nothing to do with it.

Q. What do you remember that he did at the point called X?

A. That is based on taking the distance between the point X and the line across there, and taking the time and getting his average speed between these two points, and has nothing to do with the speed he had the engines under at all.

Q. Would not the speed she was moving at X—did you consider that the vessel at X was at rest?

A. I gave simply the average speed.

Q. Did you assume that at point X she was going full speed?

A. I did not have to assume anything of that kind.

Q. Did not you in answer to counsel's questions, testify as to how far she would travel in a certain given time along this course at various stages?

A. No. For instance, at this point, 4:38 he was there and then at this point at 4:39. I measured the distance from

that point to this point and averaged the speed. He went from there to there in one minute, and there is no consideration how he had his engines running at all.

Q. Have you drawn the end of this half circle across here, which had been marked course of Indianapolis, northeast by east quarter east, to represent the point where the Kitsap was found?

A. I have not.

Q. What does that represent?

A. That represents the end of the time when the Indianapolis got clear, and is in accordance with Captain Penfield's testimony.

Q. Well, do you mean to say that you have adduced a course from what Captain Penfield testified he did with his engines?

A. Based on my experience, I have.

Q. And is that, in your opinion, to represent the place where the Kitsap went down?

A. It would be, in my opinion approximately where the Indianapolis got out of the cut, and the Kitsap may have floated on the tide from that time, and may have gone down at a point different from that.

Q. What is the distance along the curved line, from the point you marked collision, to the end of that line, just approximately.

A. I would have to measure it, because I never measured it, at least if I have I have forgotten it. (Measuring.) 1200 feet approximately.

Q. Then your idea is that the Indianapolis practically pushed the Kitsap on a curved line from the point crossing the tide to the point meeting the tide and then crossing the tide the other way 1200 feet, while they were taking the passengers off?

A. That is correct.

Q. Do you think, Mr. Evans, that any man could with accuracy say that he thought such a course as that would be followed, or that it simply might be followed?

A. With the helm hard aport, the engines moving slow-

ly on a vessel of the Indianapolis' length, for the Indianapolis to turn around and get in the direction opposite to the course she was steering, the course which I have traced out here, represents what I believe to be approximately the course that she would follow. I cannot say that it is exactly, because I do not know the exact diameter that she would take in turning under these conditions.

Q. Could any man determine any such thing as that with any accuracy?

A. I do not believe any man could determine it any more accurately than I have determined it.

Q. Would you, as a scientific man, like to announce this as anything more than a problematical course?

A. Indeed I would. I have been very familiar with turning experiments that were made under the direction of the Board of Trade and British Admiralty, on ships of various sizes, and having recently gone over all these turning experiments, and with this data at hand, I believe that this course that I have traced, represents very closely the course that the Indianapolis would follow.

Q. Do you know anything about what revolutions her engines were making?

A. I considered that Captain Penfield stated that he was going ahead—

Q. Just answer, if you know what the revolutions were? Have you any way of knowing what revolutions her engines would be making?

A. Yes, from his testimony.

Q. About what?

A. 90 or something less. He stated slow speed was 90 revolutions.

Q. Then you are assuming she would be somewhere near 90 revolutions?

A. Something less than 90 revolutions.

Q. Of course I know you cannot get at it accurately, but when you did approximate it, you must assume a reasonable approximation?

A. Between 60 and 90.

Q. Between 60 and 90 revolutions. Would there be very much difference between the extremes of 60 and 90?

A. Not on the course followed. I have not the time at all definite that it took to go around there, and there would be very little variation in the course followed, practically no variation, whether running at 60 revolutions or 90 revolutions.

Q. Is this a true circle?

A. No, it is not quite, it is more the form of a spiral; it is almost a true circle.

Q. If this course were as laid out on exhibit 4, of course the end of this spiral course here would be further to the southward?

A. It would.

REDIRECT EXAMINATION:

Q. (Mr. Merritt). Mr. Evans, if the revolutions, in the case counsel last referred to, were 60 instead of 90 per minute, would the course or time of making the course vary?

A. The course would not vary, but the time of making the distance would vary.

Q. Then as to the course that the vessel would take in making the turn, it would practically make no difference whether making 60 or 90 turns?

A. It would not.

Q. Counsel asked you if you had spent considerable time in preparing this case. I will ask you whether you stated—I believe that you did—whether you meant to say that you had spent considerable time in preparing the case or preparing your evidence in the case?

A. I think that I covered in my answer that matter, that it was only the proposition of preparing for the technical part to enable me to testify.

Q. You did not mean to be understood then, that you have taken part in preparing libellant's case or its defense to the cross libel, or preparing other evidence in the case?

A. I did not. Simply for the purpose of enabling me to testify on the technical points.

Q. Now counsel asked you whether or not, in your opinion, it would be a gross error in navigation for the Kitsap to have crossed the course of the Indianapolis twice. I will ask you, whether or not, in your opinion, in view of the evidence in the case that the Indianapolis passed the bell buoy at 4:33 and the Kitsap left pier 4 and backed to pier 5 at 4:35, even if she had to cross the line of the course of the Indianapolis from the bell buoy, would have been a gross error in navigation on the part of the Kitsap?

A. It would not.

Q. The fact is that that course does, in any event, cross the course of the Indianapolis twice.

A. Yes sir.

Q. But at a time when the Indianapolis was a long distance away?

MR. BRONSON: I object, it is too problematical.

A. Yes sir. The first time the Kitsap the extension of the Indianapolis' course was at a time about 4:36½ or 4:36 and 3/4ths, and at this time, if the Indianapolis left the buoy at 4:33 and made 15 knots, she would be at a considerable distance from the Kitsap.

Q. Now the course which you have marked on this exhibit, libelant's exhibit "J", and also on libelant's exhibit "M", the chart, I will ask you what that course is based on that you have marked there, the course of the Kitsap?

A. It is based on the evidence of Captain Hanson and other officers, that the Kitsap backed away from the south side of pier 4 on a starboard helm to in front of pier 5 and then went ahead with her helm hard aport at 60 or 65 revolutions per minute.

Q. Have you taken into consideration the evidence concerning the tide at that time?

A. I have. The tide running about a mile an hour, would shorten the turning circle, making it slightly less than it would be otherwise.

Q. Have you taken into consideration your experience and knowledge of how a vessel of the size and type of the Kitsap would turn with a helm hard aport and engines making 60 or 65 revolutions per minute?

A. Necessarily I did that to plot the course.

Q. Now do you care to explain how the Kitsap could have been at a two and a half point off the Grand Trunk dock on the two occasions that counsel called your attention to?

A. That would be laying off approximately two and a half points on exhibit "J". It will be noted that this line crosses the course twice, once when she is about 450 feet out and at another point further on after she had gotten on her course to Four Mile Rock.

Q. You testified that it was difficult to distinguish or determine the exact direction of sounds in a fog. I will ask you whether or not it is so difficult that you could not tell whether a vessel was north or south of the Grand Trunk dock, if you were in a tower on the end of that dock?

A. Oh no, no.

Q. In the course you have drawn or taken as the course of the Indianapolis, you took that course from the oral evidence given by Captain Penfield, didn't you?

A. I did.

Q. That he had steered a course northeast by east quarter east, magnetic?

A. Yes sir.

Q. And in stating that the course which he had drawn on Claimant's Exhibit 4 was not such a course, northeast by east quarter east, magnetic, from the bell buoy, you were referring to his testimony that he had drawn that course on this chart?

A. I was.

Q. The course which he had drawn and marked northeast by east half east, is a course northeast by east half east magnetic from the bell buoy?

A. It is a course northeast by east half east magnetic from the bell buoy.

Q. But you put the other course on your chart for the reason that he had testified that it was quarter east instead of half east?

A. Yes sir.

Q. Because he testified, and had emphasized his testimony that it was a quarter instead of a half?

MR. BRONSON: I move to strike the statement of counsel that he had emphasized it.

Q. Now you remember Captain Penfield's testimony that he had a course for fair weather and a course for foggy weather?

A. I do.

Q. And that the course for foggy weather was northeast by east quarter east, while the other course was northeast by east half east?

A. That is correct.

Q. I will ask you to refer to libellant's exhibit 4, and having in mind the evidence of Captain Penfield as to how he came into the dock and where, both on his fair weather and foggy weather course, how he came in and turned there, whether or not he could have steered a course northeast by east three quarters east or any course different or further to the eastward than one half, being bound where he says he was, and make the turn into the Colman dock?

A. He could not.

Q. Then the course which is shown here as northeast by east half east, magnetic, is approximately his fair weather course to reach the point he says he turned into the Colman dock?

A. It is.

Q. And the course northeast by east quarter east which you drew on the map, is the course which he testified he took in foggy weather.

A. It is.

Q. Now you have stated that you are very certain that the approximate weight of the Indianapolis is as you have given it. I will ask you to state whether or not in your opinion the Indianapolis could have a weight of 1500 or 1600 tons.

A. It is impossible.

Q. Just state why.

A. Yesterday afternoon I made an approximation of

the Indianapolis' displacement, taking her length at 180 feet and her breadth on the water line at 30 feet and mean draft of 8 feet, and taking a block coefficient of a vessel of this size and type, I estimated her displacement to be 493 tons. If this ship was of box shape form, that is not ship-shaped at all, with these dimensions, she would then be a little over 1500 tons, which would necessitate her being of box shape.

Q. In other words, a cube of the dimensions which you have given, would weigh a little over 1500 tons.

A. No, not that exactly. That at the draft given it would require her to be of box shape and form to make her displace that much water.

Q. When you say block shape, you mean square cornered all around?

A. Yes.

Q. So that she would be 180x30x8?

A. Yes.

Q. A cube of these dimensions would weigh a little over 1500 tons?

A. The water which she displaces would weigh 1500 tons. The Indianapolis would have to be so far down in the water that she would perhaps sink.

Q. Now this coefficient, .4, is that the usual coefficient used in vessels of this type and speed that she has?

A. That is where the judgment of a naval architect has to come in on his data as to the various coefficients, and .4 is the coefficient of a vessel of this size and type, approximately.

Q. (Mr. Bronson). How much of your life has been spent at sea?

A. Leaving out the practice cruises at the Naval Academy, where I had one of one summer, the third class, and one summer first class year, I have had three years' experience at sea, in addition to that time at the Naval Academy.

Q. On United States war ships of one kind or another, I suppose?

A. Yes sir.

Q. (Mr. Merritt). You stated in answer to one of counsel's questions, that you had been requested by Mr. Gazzam, to make some investigation of this matter, before you had formed any opinion about it. Now I will ask you whether or not your opinion on any of the matters concerning which you have testified, have been in any way influenced, so far as you know and can say, by the fact that Mr. Gazzam had asked you to make this investigation or that you had investigated it at his request?

A. Not in the slightest degree. And I informed Mr. Gazzam at the time that I would give him an opinion as to the facts absolutely.

MR. BRONSON: I do not think that is material, and I move to strike it out.

Q. You said at one time that you had estimated that the Kitsap was moving forward at the time of the collision. After the investigation that you have made I will ask you whether or not you have changed that assumption?

A. I did, because I found that the assumption did not fit in with the conditions that I found on the Kitsap, the damage.

Q. I think you explained that pretty thoroughly in your direct examination. You did say there that she might possibly have been moving a trifle.

A. Yes, but it is so small that you could not consider it.

Q. (Mr. Bronson). Your knowledge of these matters is very largely theoretical, that is based upon reading books and authorities?

A. Not at all. I have been actively engaged in the repairing of damages—

Q. I am not talking about that. I am talking about the plotting of this course?

A. No, it is based on experience and data that I have refreshed my mind on.

Q. Matters in the nature of expert books that you have referred to?

A. There is only one thing that I have refreshed my mind on, and that was this Admiralty turning experiments.

Q. That is theoretical work, that is not matters that you yourself are familiar with?

A. It is where various ships were taken out and tried.

Q. You did not do it yourself?

A. No, I did not.

(Testimony of witness closed.)

(Hearing Sept. 1, 1911.)

GEORGE W. HILL, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Merritt). Where do you reside?

A. Seattle. My office is on the Grand Trunk dock.

Q. You are port warden of the city of Seattle?

A. I am.

Q. And have been for several years past?

A. Going on two years.

Q. And your office now and prior to December last year has been on the Grand Trunk dock?

A. Yes, since last October.

Q. That is on the extreme outer end of the Grand Trunk dock?

A. Yes sir.

Q. That tower is about how high from the water?

A. To my office, you mean?

Q. Yes.

A. Well, at extreme high tide I would judge, I never measured it, but as a rough estimate I should think in the neighborhood of 65 feet.

Q. And where is that office in the tower?

A. It is in the front of the tower on the second floor.

Q. And in the northeast corner, I mean?

A. Yes sir.

Q. And where is your desk in your office?

A. My desk sits to my left as I sit in the office. It sits on the south side.

Q. And to your right are two windows?

A. Yes sir.

Q. Looking out toward the city dock?

A. Looking northward.

Q. About how much room is there between your desk and these windows?

A. About a foot from the desk and there is about 3 feet for my chair.

Q. Now do you remember the Kitsap and Indianapolis wreck the day of that wreck, the collision, last fall?

A. Yes, I remember very well the accident but I do not remember the date.

Q. Where were you at the time of the accident or just prior to it?

A. I was sitting right at the window between my desk and the window. Here was the desk and I was sitting here and back there was a partition.

Q. You mean you were sitting with your back to the partition back of you, with your desk at your left and the window at your right?

A. Yes sir.

Q. Did you notice the Kitsap leave the dock that day?

A. I did.

Q. And how did she back away from the dock, and from which side of the dock did she leave?

A. Of the Grand Trunk dock?

Q. Whatever dock she was at.

A. Well, from the dock where she was landing she backed out and backed down north very near to pier 5.

Q. Which dock was she lying at?

A. She was lying at the Galbraith dock.

Q. And what side?

A. She was lying at the west end of the Galbraith dock.

Q. You say the Galbraith dock, do you mean pier 3 or 4?

A. Pier 4.

Q. And she backed down north to pier 5, and then what did she do?

A. She came ahead, made a blast of her whistle and came ahead and passed on out.

Q. How was she running, straight ahead or on a turn or what?

A. At the time I saw her she was making a circle out from pier 5, coming like that.

Q. When you say like this, do you mean on a starboard or port helm?

A. She was making to starboard?

Q. How long did you see her? Where was she when you last saw her?

A. She was about two and a half points off to the north of the Grand Trunk dock.

Q. When you last saw her?

A. When I last saw her, yes.

Q. Had you seen her all the time up to that time, from the time she left?

A. Well, not all. I had cast my eye out, I noticed when she first backed out and came ahead after the blast of the whistle. I had the evening paper, and I looked down at her as she gave the blast of the whistle.

Q. Do you know whether she went south of the Grand Trunk dock?

A. No sir.

Q. How was she headed when you last saw her, these two points or two and a half points?

A. When I saw her she was nearly sideways.

Q. Do you know the usual course of the Kitsap on her run?

A. Yes, I have seen her go out of there hundreds of times I guess.

Q. State whether or not she made the usual turn at this time, that she usually makes?

A. She did.

Q. Did you hear the crash afterwards?

A. I did.

Q. Where did you hear the crash?

A. I heard the crash about two and a half points off the Grand Trunk dock, west.

Q. That would be to the right of the Grand Trunk dock?

A. It would, yes sir.

CROSS EXAMINATION:

Q. (Mr. Bronson). Do I understand that the window to your right faces out to the bay or to the northward?

A. Faces north out into the bay.

Q. Have you got a window?

A. There is two windows. There is a window like here, a small window and one here, and a small partition and then another window there in my office.

Q. Let me get at this in my own way. Was your back to Railroad avenue, or substantially so?

A. It would be, my back would be north, the city out east from where I sat.

Q. Would your back be to Railroad avenue?

A. Yes, it would be toward that.

Q. You were facing out into the bay?

A. No, out into the bay, I was facing north.

Q. Then your back would not be to Railroad avenue, your back would be to South Seattle?

A. Railroad avenue, you go straight from my office out to Railroad avenue.

Q. You know that Railroad avenue runs parallel to the water front?

A. Yes sir.

Q. Was your back parallel to the water front or at right angles?

A. Not sir, it was not right exactly in line with Railroad avenue, it would be more sitting east, my back would be almost due east.

Q. What I am trying to get at is whether you have a window in front of you looking out into the bay or whether your window looks north?

A. No sir, the window in my office looks pretty near due north. When I step out of my office into the secretary's office

Q. Did you step out on this particular occasion?

A. I did, after I heard the crash.

Q. We are not talking about that. You were looking out of the window, looking north?

A. At the time the Kitsap backed out and came ahead.

Q. I will have you make a little sketch of that room, so that we can intelligently understand it. Showing the windows and the desk, etc.

(Witness draws diagram).

Q. Now you have got north. What is this?

A. This is southwest. This is the secretary's office and is my office. Here are the windows.

Q. What is this?

A. That is looking west, that is the face of the dock looking west.

Q. If that is north, this is south, is it not?

A. Yes, that is southwest, the way the dock sits.

Q. Where is your desk?

A. Here is my desk.

Q. I will mark that desk.

A. And here is the chair I was sitting in. And there are the windows.

Q. These two marks "w" are windows?

A. Yes sir.

Q. Now there are no windows on the west side?

A. Not in my office. I have to come through a door.

Q. You have to come through this place marked door?

A. Yes sir, and look out of one of these windows in the secretary's office.

Q. Now sitting here at your desk, when you heard the Kitsap blow her cast off whistle?

A. Yes, and she came ahead.

Q. How far away was she from you when you were sitting there, just approximately?

A. When do you mean?

Q. When she started from the dock?

A. Well, the dock was, I would judge it would be probably 500 yards, may be.

Q. To where she was lying?

A. From where I was. I would judge she was that. I would not like to say. She backed up nearly to pier 5.

Q. Then she came ahead?

A. Yes sir.

Q. And were you watching her while she was coming ahead?

A. No sir, not all the time.

Q. How long a time do you suppose she came ahead?

A. Well, not over a minute and a half I would judge.

Q. You looked out occasionally to see?

A. I looked out when she blew the blast of her whistle. I had a paper in my hand and I noticed that whistle, and I made a remark a while before that the fog was very thick.

Q. When you last saw her where were you?

A. I was sitting in the chair.

Q. Looking out of the windows?

A. Yes sir.

Q. And she was then about two points and a half off of the dock?

A. Off this side, see.

Q. You mean two points and a half north of the dock?

A. Yes, north west.

Q. Could you see exactly how she was headed then?

A. Well, yes I could see she was headed out, going out on her regular course.

Q. Could you see the points of the compass that she then drew between the range lights?

A. No.

Q. You simply know that she was swinging?

A. I knew she was making her circle.

Q. You do not know how she was headed?

A. I do not know exactly what point she was on on his compass I could not see that, but I know she was making a circle.

Q. How long afterwards was it that you heard the noise of the collision?

A. Well, it might have been in the neighborhood, I don't think over three minutes from the time I looked out at her here.

Q. And the noise of the collision came to you at that time that is still at about two and a half points off the dock?

A. Yes sir.

Q. Indicating that she was practically steering a straight course?

A. Yes, I think from where I seen her and from where I heard the noise, as it sounded to me. Of course I could not say where the accident happened, it was too far out into the fog, but from the noise I heard, and the course she was on when I last saw her when she passed the last window, I would judge she was on her course.

Q. It was quite an appreciable time, whether three minutes or not, it would be several minutes?

A. I would not like to say three minutes, but I am confident it was not over three minutes, it might have been under that.

Q. You figure that it would probably be all of two minutes?

A. Yes, it would be all of two minutes.

Q. Can you locate the sounds accurately when you are in a room like this, so that you would be able to swear to them as to exactly where they came from?

A. Well, when I heard the crash I jumped out and ran and opened the window and I heard hollering and noise out there, and from where I was standing at that window, while I could not see it, but still I was confident I was pretty near.

Q. You of course figured this, didn't you captain, you figured that she was on her regular course?

A. I did.

Q. You figured that she went on her regular course and in that time she would be quite a little to the northward and you naturally placed the noise where she ought to be?

A. Not so much that as by hearing the noise.

Q. Would not that influence your mind?

A. To a certain extent.

Q. You would not expect to find a noise down near the Moran dock?

A. No, I would not, not by knowing it was the Kitsap going out and seeing her with my own eyes. and knowing she was going out. You see if I had heard a noise toward Yesler avenue or down at pier 1, I would naturally suppose it was not the Kitsap, I would suppose it was something else.

REDIRECT EXAMINATION:

Q. (Mr. Merritt). You have not measured the distance between the Grand Trunk dock and pier four or five?

A. No sir never have.

Q. How was the fog at this time?

A. The fog was pretty thick.

Q. And was it thick at the elevation where you were as it was below?

A. No sir, the fog was hanging low. I could look out over up in the tower. Up there I could see until the boat came close in. In close I could not see so much as I could when she was further away. When she was a little further away I could look over the fog, and when she came up on her course I could not see so much of the boat as I did when she was backing off.

Q. How much of the boat could you see at this time?

A. Well, I saw the stack and I could see about half, a little over half of the boat.

Q. Could you see all of her at any time?

A. No sir, I did not see all of her at any time.

Q. Was there any doubt in your mind whether it was the Kitsap or not?

A. Well, I knew it was the Kitsap because I could see her stack and could see about half of the boat, and then I am pretty familiar with the Kitsap's whistles, and that is another thing. I could be confident if I had not seen her because I know the Kitsap's whistle.

Q. You say you could see half the boat?

A. Yes sir.

Q. (Mr. Bronson). Do you know the Reliance?

A. Yes sir.

Q. Did you see her at the same time?

A. No sir, I did not see the Reliance.

Q. Do you think that the Reliance came out at the same time, or if she did that you would have seen her?

A. Well, if I had been looking out, yes I might have seen the Reliance when she let go from the dock, but the Reliance comes down always close in under these windows, she comes

in close to the dock, she don't stand off the Grand Trunk dock as far the Kitsap and you would have to look down.

Q. You could not see as well, I understand, when she got closer to you, as when she started out?

A. No sir, I could not on account of the fog, as I told you.

Q. You could not see her as well when she was down nearest to the dock as when she started on her course or when lying at her dock?

A. How is that?

Q. Could you see her as distinctly when she got close to the dock as you could when she started?

A. No sir.

Q. Nor as when she started to come ahead?

A. When she backed out and came ahead you could see her a great deal better than when she got closer to the north side of the dock. When the Reliance went out I was sitting with my back to the window that way. The Reliance might have went out ahead of the Ktisap, before I picked up my paper I could not say as to that.

Q. But if she was behind the Kitsap, you would have seen her?

A. I think I would, if she had backed down as far as the Kitsap, but as I tell you, sitting up there in the tower that way it is pretty high, and the fog was low and you could look down that way and you could see better than you could if they were close up against you.

MR. BRONSON: I offer the diagram drawn by the witness in evidence.

Paper marked Claimant's exhibit 14, filed and returned herewith.

(Testimony of witness closed).

Seattley, Washington, Friday, October 13th, 1911.

PRESENT: Mr. Merritt, for the libelant.

Mr. Bronson, for the Claimant.

CLAIMANT'S SUR-REBUTTAL.

CAPT. HOWARD PENFIELD, recalled, testified as follows:

Q. (Mr. Bronson). Captain Penfield, I notice in reading the transcript of your evidence on page 164 of the record, near the bottom of the page, I appear to have asked you this question: "Q. You got yourself a three minute echo and then you put her half speed astern." State whether or not you understood me to say a "three minute echo" or a "three second echo?"

A. Three second echo, sir.

Q. Could you get a three minute echo off of the boat in Seattle harbor?

A. No sir.

Q. I call your attention also to page 168 of the record, where, after identifying a chart marked 4 for identification on the part of the Claimant, and which you were asked if you had marked the course of the Indianapolis on the day of the collision, to which you answered "Yes sir," and immediately following which appears the question "Q. North east by east quarter east?" following which is the answer "Yes sir." State whether or not you understood me to refer to the course you steered, or to the course on the chart, as north east by east quarter east?

A. The course I steered, sir.

Q. How does the course you steered vary from the course you have marked on the chart, and what is the reason for it?

A. The deviation, a quarter point easterly.

Q. You mean that the compass of the Indianapolis deviated at that time a quarter of a point east of the magnetic course on the chart?

A. Yes sir.

Q. And that explains the difference between the course you steered and the course laid out?

A. Yes sir.

Q. Do the compasses on all iron vessels deviate from the true magnetic course.

A. More or less, yes sir.

CROSS EXAMINATION:

Q. (Mr. Merritt). Did you ever swing the compass on the Indianapolis?

A. No sir.

Q. How long have you been master of her?

A. Been master of her four years, approximately four years.

Q. Ever since she came to this coast?

A. No sir.

Q. How long after she came to this coast?

A. About a year.

Q. Has the ship been swung since you were master of her?

A. Not to my knowledge.

Q. Has she been swung since she left the Atlantic?

A. Not that I know of.

Q. She is an iron ship?

A. No sir.

Q. Steel?

A. Yes sir.

Q. Hard steel?

A. I do not know whether it is hard or not; it is steel.

Q. The compasses on steel vessels deviate more than they do on iron vessels, do they not?

A. Not necessarily so.

Q. They deviate more on iron vessels than they do on wood vessels too, don't they, as a general thing?

A. As a general thing.

Q. Unless there is something in the cargo or particular local influence on the wooden vessel that might influence a compass?

A. Yes sir.

Q. What is the deviation of the Indianapolis' steering compass or was at that time?

A. On that course?

Q. On that course.

A. A quarter of a point, approximately, a quarter easterly.

Q. What was the deviation of this compass on other courses?

A. The only ones I know are the courses I run. I do not

know the deviation on any course other than those I run. She is approximately from a quarter to five eighths.

Q. Then the deviation is approximately the same on all of the courses?

A. Not necessarily.

Q. Well, not necessarily but was it in fact?

A. No sir.

Q. Well, from a quarter to five eighths of a point?

A. Some of them are over.

Q. I mean in this ship at this time, her deviation was from a quarter to five eighths of a point on all of the different courses?

A. No sir.

Q. You run, in making your trip from here to Tacoma, you run approximately all the courses?

A. All the courses on the compass?

Q. Approximately, not exactly I mean, but approximately?

A. I do not catch your meaning there.

Q. What is your course out of Tacoma?

A. Tacoma to where?

Q. The first course out of Tacoma, after turning on to your course?

A. The first turn do you mean? Northwest half west is the first course.

Q. What is the magnetic course?

A. I could not tell you; I have it on the card there.

Q. Then what course do you take?

A. Northwest five eighths, I think.

Q. Then what changes do you make from there on?

A. I am steering north.

Q. Generally northward?

A. Yes sir to Dash point; Dash Point north quarter east to Robinson; Robinson to Three Tree Point north west quarter north; from Three Tree Point to Brace Point northwest three quarter north; Brace to Alki north east three quarter east; Alki to the buoy, north by east quarter east; from the buoy into the dock, foggy weather, I steer north east by east quarter east.

Q. Magnetic?

A. No sir, compass.

Q. North east by east compass?

A. Yes; these are all our compass courses.

Q. And when you return to Tacoma you run just the opposite courses from the ones you have just given?

A. No sir.

Q. Well, how near to the opposite course?

A. Pretty near; do not take the same departure.

Q. But after you have rounded the bell buoy, from there in to Tacoma, it is approximately the opposite courses from the ones that you have given from Tacoma to the bell buoy?

A. What do you call approximate, how close is that?

Q. Well, within a point.

A. They are within a point of the opposite courses?

A. Yes sir.

Q. Now in fair weather do you run by your compass?

A. All the time, yes sir.

Q. All the time?

A. Yes sir.

Q. You never steer by points on the land?

A. No sir.

Q. Your fair weather course from the bell buoy to the dock in Seattle then, is north east by east half east compass?

A. No sir, it is not.

Q. What is it?

A. It is north east by east quarter east.

Q. Compass?

A. Fair weather, sir.

Q. What is the foggy weather course then?

A. That is the same.

Q. Just the same?

A. Yes sir.

Q. You mean to say now that you run the same course in foggy weather that you do in fair weather, from the bell buoy in?

A. Yes, but my departure is wider.

Q. Your departure is wider?

A. Yes sir.

Q. How much wider?

A. Well, considerably. I generally get the buoy there, when I cannot see it, on a four second echo.

Q. That is in foggy weather?

A. Yes, a little wide of the buoy.

Q. A little wide of the buoy?

A. Yes sir.

Q. On a four second echo. How far would that place you off the buoy?

A. Varies. The course varies a little; we cannot get down right to a sixteenth of a degree.

Q. Approximately; I do not ask you to get down to a sixteenth of a degree. I want to know approximately how much further out from the buoy in foggy weather than you are in fair weather?

A. Well, I do not round as close as in fair weather—fair weather sometimes I go inside.

Q. But not in foggy weather?

A. No sir.

Q. But in fair weather?

A. Yes sir.

Q. Well, in foggy weather would you be as much as 200 feet off the buoy?

A. A little more than that in fog.

Q. Three hundred.

A. Somewheres around 300 feet.

Q. Then you steer north east by east quarter east, compass?

A. Yes sir.

Q. And in fair weather you round the buoy a little bit closer usually and steer north east by east half east, compass?

Q. Well, I alter my course, I steer about $\frac{5}{8}$ ths something like that.

Q. About $\frac{5}{8}$ ths?

A. Yes sir.

Q. You make a difference between a fair weather course and a foggy course of about a quarter of a point?

A. Sometimes.

Q. A quarter of a point is a little less than three degrees is it not?

A. A little less, yes sir.

Q. And the difference between the points at which you would arrive by your turning point and come into the dock would be the length of this, a little less than three degree portion of a circle, of which the bell buoy and the point where you struck this turning point would be the radius, would it not?

A. There would be a difference of a quarter or three eighths of a point, is all.

Q. Of a quarter or three eighths—

A. Of a quarter or one eighth, I mean.

Q. Then your three eighths is the difference between the two courses?

A. Yes sir.

Q. If it was more than that it would be more?

A. Yes sir.

Q. Now you testified before the Inspectors, didn't you?

MR. BRONSON: That is going a long ways wide of the direct examination, where I asked him about the correction of two clerical errors made by myself. You went into the question of his examination before the Inspectors on your former cross examination.

Q. You did testify before the Inspector's didn't you?

A. Yes sir, I testified.

Q. And you there testified that your course in foggy weather was north east by east quarter east?

A. Yes sir.

Q. And you testified that your fair weather course was north east by east half east?

A. Well, you are getting down to a fine point—I might have said that.

Q. You testified in this case the course in foggy weather was north east by east quarter east, and the fair weather course was north east by east half east from the bell buoy didn't you?

A. Yes sir.

Q. And you testified that was the magnetic course?

A. North east by east half east.

Q. Both courses?

A. North east by east quarter east magnetic?

Q. Both courses?

A. Well, I want to say if you have it down there at the Inspectors that I testified that way—I do not remember about the testimony up there now, I have not refreshed my memory.

Q. Is it not a fact that if you had intended to testify to the compass courses, instead of the magnetic courses, that no one without knowing the error of this particular compass, could have plotted your course?

A. I do not understand you.

Q. I mean this, if you testified that you ran a certain course by your ship's compass, and did not give the error of that compass, no one would be able to plot that course without knowing that error?

A. Certainly not, not knowing the error.

Q. You have got to know the error?

A. Yes sir.

Q. You did not testify as to the error of the compass, did you?

A. Before the Inspectors?

Q. Either time, before the Inspectors or before the Commissioner here?

A. I think I testified up there that it was a magnetic course. Either a magnetic or compass course. I know the Inspectors asked me if it was a compass course, if I remember right.

Q. Did you tell him?

A. I told him, yes.

Q. You told him that it was a compass course?

A. I think so, I think north east by east quarter east.

Q. Are you sure about it?

A. I am not positive. I remember he asked me. I could not say whether he asked magnetic or compass course.

Q. And you told him it was magnetic course?

A. I don't know.

Q. Well, if he had asked you whether it was a compass course and you did not tell him the error of your compass, he would not know what course you actually took, would he?

A. I don't know.

Q. You do not know?

A. No. He knew I made north east by east quarter east, and he would naturally take it for the compass course.

Q. He would naturally take it for the compass course, would he?

A. He would. I would, if they did not state magnetic course I would take it for the compass course.

Q. And that would convey some definite course to you without any knowledge of the error?

A. He could not take a pair of parallel rulers and lay out the course.

Q. Without knowing your error?

A. No sir.

Q. You did not tell the Inspectors and you did not tell here before the Commissioner what the error was?

A. I do not know that I did.

Q. If you had testified as to the magnetic course then any one could take parallel rulers and run that course out?

A. If he knew the deviation.

Q. Without knowing the deviation of the compass he could lay it out?

A. Yes, on a chart.

Q. If he knew the variation of the magnetic course here in this harbor, then he could lay out that course with parallel rulers, could he not?

A. Yes sir.

Q. Now, is it not a fact that when you testified in relation to this course, that you did mean that you were running—that you were testifying as to magnetic courses—courses which could be understood both by the Court and by the Inspectors?

A. No sir, I did not. I could not run the compass course off on a chart. That is out of all reason. I put that chart in with the courses on there for evidence of the magnetic courses. I cannot run the compass course off on the chart.

Q. You always have to reduce it to magnetic?

A. Yes, either by magnetic or true course.

Q. Ordinarily—

A. When you ask the course I steer, I steer north east

by east quarter east, but I made north east by east half east magnetic.

Q. And when you steer north east by east half east, fair weather compass, you are then making north east by east three quarters east, magnetic?

MR. BRONSON: There is not any evidence here that he steered north east by east half east, as I remember it, except as that was a magnetic course.

Q. Answer the question.

A. I will not answer that—

MR. BRONSON: You can answer the question any way you want to.

A. What has it to do with this case? He is running off somewhere else, and wants to get me in a hole—

MR. BRONSON: If the question is misleading, intentionally or otherwise, you can explain.

A. I did not say I steered north east by east half east, I said from a quarter to three eighths, approximately three eighths, and that is what it would make. As he asks that question it would make north east by east three quarters east.

Q. Now captain, do you want to be understood as testifying that there is only a difference of a quarter and three eighths in your fair weather and your foggy weather course?

A. Approximately that, I could not get right down to—

Q. I will ask you what you meant, then, by your testimony on page 160 of the record, when you say:

“Q. That is your course unless you have to make way for some vessel?

“A. Yes. That is not the course when clear, I steer a different course then, I steer a half in clear weather.”

A. That is right.

Q. That was your testimony?

A. Yes sir.

Q. That was correct, was it?

A. Yes sir.

Q. And you also testified on your direct examination that the difference between the two courses was approximately the difference between the Grand Trunk and the Colman dock?

A. Approximately that.

Q. About 90 to 100 feet?

A. A little more than that, I guess.

Q. It would be a little more than that, would it not?

A. It might be more than a hundred, it is more than that between the Grand Trunk and the Colman dock.

Q. How far is it between the two?

A. I don't know, it is only guess work for me to say. Approximately a couple of hundred feet, I guess. I never measured it between the two piers.

Q. What you want the Court now to understand is, that because of the deviation of your compass, a course of north east by east quarter east is identical with the magnetic course north east by east half east, is it?

A. It might vary a little on that half, I would not say. The deviation is not the same on all our courses.

Q. It is usually a little more on the course from the bell buoy in, that it would be on other courses, is it not?

A. It used to be magnetic on that course.

Q. It used to be magnetic on that course?

A. Yes sir.

Q. Is it not magnetic at this time?

A. No sir. It threw her course out when we took the rigging out of her.

Q. The Indianapolis has been on the dry dock a great many times since she was put on this run?

A. Yes sir.

Q. That often changes the compass, does it not?

A. Never changed mine.

Q. Did not.

Q. At this time the compass course was not the magnetic course on this run?

A. The compass?

Q. Was not magnetic?

A. No sir.

Q. It was about a quarter of a point off?

A. Yes sir.

Q. And I say, what you want the Court to understand is, that the compass course north east by east quarter east was the same as magnetic course north east by east half east?

A. Yes sir.

Q. And of course it would follow that the compass course north east by east half east would be the same as north east by east three quarters east, magnetic?

A. Yes sir.

REDIRECT EXAMINATION:

Q. (Mr. Bronson). Captain, in case of a fog in Elliott Bay where is the fog the thickest?

A. Generally thickest over on the east shore here; most always.

Q. In the case of a vessel getting under way, leaving one of the docks here in Seattle we will say, her degree of curvature increases or decreases as she picks up her speed in turning around?

A. Increases.

Q. Will she turn in a larger circle or a smaller circle?

A. It will increase as the speed increases her circle will increase.

Q. That is she will turn a larger circle?

A. The average boat will; it depends on the construction of the boat. The average boat will increase her—as her speed increases her circle will increase.

Q. Then you do not mean to say that the degree of curvature will increase, the degree of curvature will decrease—she will describe a wider, broader circle?

A. Yes sir.

Q. (Mr. Merritt). Of course the curvature of the circle depends a great deal on the condition of tide and wind as well as the speed of the vessel, does it not?

A. Yes sir.

(Testimony of witness closed).

C. W. BRONSON, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Bronson). You are a civil engineer?

A. Yes sir.

Q. I ask you to examine this paper identified as Claimant's exhibit 15, and ask you if this is a drawing or tracing prepared by yourself?

A. It is.

Q. Did you make a survey of Railroad Avenue from the Colman dock northward, within the last few days?

A. I made one yesterday.

Q. Is there marked on here the distances of the docks along the face of Railroad avenue to an approximately correct figure?

A. There are.

Q. And have you marked a point on this chart called "Mud chute," a prolongation or projection of Bell street, where the mud chute came out?

A. I have.

Q. This does not attempt to indicate how far it projected out into the bay?

A. No.

Q. Have you also drawn on this chart two circles based upon the distance from pier 4, southerly and westerly, upon two hypotheses, one that a vessel on a continuing and true course passing within 100 feet of the front of the Grand Trunk dock, and one that passes within 200 feet of the Grand Trunk dock?

A. Yes sir.

Q. Are these courses marked here?

A. They are. This one is marked with "100" feet and this with "200" feet.

Q. And these are the courses which a vessel would describe if she drew a steady and true circle?

MR. MERRITT: I object, the witness is not qualified.

MR. BRONSON: I am not qualifying the witness as a navigator. I am simply producing this on a mathematical basis. I expected the Court to take that into account, the action of the tide and wind, etc., but these two circles describe the circles that a vessel would follow if she followed a steady progressive circle from the point on pier 4 to the points, one of which was a hundred feet out and the other two hundred feet out from the Grand Trunk dock.

A. They would.

Q. What is the distance between the Grand Trunk dock—what is the distance between the north line of the Colman

dock and the south line of pier 4? What is the distance between the southerly point of pier 4 and the Grand Trunk dock?

A. 944.2 feet, practically.

Q. Is that from the north line of the Colman dock or the south line?

A. That is the south side.

Q. The distance from the north line would be what?

A. 132 feet less. 812.2 feet.

Q. Mark pier 4 on this drawing.

(Witness does so).

Q. Now did you measure the distance down to where the mud chute comes out at Bell street?

A. I did.

Q. What is that?

A. The total distance from the south side of the Colman dock?

Q. No., I want the distance from pier 4.

A. The southerly side?

Q. Yes sir.

A. 3472.5 feet.

Q. Are the lines of the Colman, Grand Trunk and Pier 4 approximately parallel to each other?

A. They are.

MR. BRONSON: I offer this drawing in evidence.

MR. MERRITT: I object as incompetent, irrelevant and immaterial, and not based upon any evidence in the case.

Drawing marked Claimant's exhibit 15, filed and returned herewith.

CROSS EXAMINATION:

Q. (Mr. Merritt). Mr. Bronson, you have undertaken to draw on here the curvature of a vessel starting from the north side of pier 4 and making a uniform curve, at one time 100 feet off the northwest corner of the Grand Trunk dock, the other time 200 feet off the Grand Trunk dock, have you?

A. Yes sir.

Q. What is the distance between the northwest corner of the Grand Trunk dock and the northwest corner of the Colman dock?

A. Well, there would be about 349 feet.

Q. Now it is a fact, is it not, that the Colman dock does not stand as far out into the bay as the Grand Trunk does?

A. Very close.

Q. Well, about what is the difference?

A. I will scale that and I can tell you. (Does so). I measure this side, that is 602 feet, and this side is 599, you see. This is 177 feet to here.

Q. Do you mean to say that the Colman dock stands, the north west corner stands as far into the bay as the Grand Trunk?

A. I think so.

Q. You did not measure to see?

A. I did not, but you can scale that. I measure to this point and that is 602 feet to there, and this is 599 to there, and that is 177 feet out there. That would be about 680 feet.

Q. And the other is 602?

A. Yes.

Q. You have drawn a straight line for the water front here, have you not?

A. Yes sir.

Q. Is it not on a curve, in fact?

A. No.

Q. Is not the water front on a curve there?

A. I do not think so.

Q. You did not get the line of the meander line, nor any survey line to start from, did you?

A. No. I took what apparently was the street line.

Q. What apparently was the street line?

A. Yes, the property line.

Q. If your curve started from the north side of pier 5 instead of the north side of pier 4, of course it would be further from the end of the Grand Trunk dock, when opposite the corner, the northwest corner, of the Grand Trunk dock?

A. No.

Q. In other words, if the curve, instead of starting at this point, the northwest corner of pier 4, started at the southwest corner of pier 5, the point at which it would be opposite the northwest corner of the Grand Trunk dock would be further out in the bay, would it not?

MR. BRONSON: I object, because the point opposite the Grand Trunk dock on which this circle is drawn, assumes an arbitrary distance of 100 feet or 200 feet from the Grand Trunk dock; in other words, the point of departure and the point opposite the Grand Trunk dock are two fixed points for the supposition on which this plat is drawn.

A. I do not quite get your question.

Q. Starting at the southwest corner of pier 5, drawing this same curve, it would be further out in the bay opposite the northwest corner of the Grand Trunk dock, than you have indicated in this exhibit?

A. Keeping the distance the same—

Q. Keeping the same curve.

A. Yes.

Q. Now what is this line that you have drawn to the mud chute?

A. This here is the angle point approximately, the angle point in Railroad avenue.

Q. The point marked southerly side of Railroad avenue strikes the straight line, at the position where Railroad avenue turns at an angle toward the mud chutes?

A. Yes sir.

Q. That line represents the line of Railroad avenue from this point where it turns down to where it strikes the point where the mud chute was?

A. Yes sir.

Q. The chute has all been taken down since last fall?

A. Yes sir.

Q. In making this exhibit, all you undertook to do was simply assuming that a vessel was making a regular course and then turning, and that she was 100 feet off the northwest corner of the Grand Trunk dock, you figure where the course would be opposite the northwest corner of pier 4. What you have undertaken to do is to take a starting point 100 feet off the northwest corner of the Grand Trunk dock and drawn the course from there?

A. No, I assume that the curve started from here.

Q. When you say here, you mean the northwest corner of pier 4?

A. Yes sir.

Q. That is what you assume, the curve starting over there?

A. Yes sir.

Q. Then you sought to find where the curve would strike a line directly out from the northwest corner of the Grand Trunk?

A. No, I assume that the curve passes from this point 100 feet off from the northwest corner, and two hundred feet off the northwest corner.

Q. You simply drew that curve, that is all you undertook to do?

A. Yes sir.

Q. Can you tell approximately how many feet that would bring you from the north west corner of the Colman dock, on that same curve?

A. It would be about 260 feet and from the further one about 330 feet.

Q. That is measuring to the nearest point of the curve

A. At right angles.

Q. Now measure this line from the north side of the Colman dock, and see how far it would be.

A. Two hundred eighty feet.

Q. 280 feet to the nearest point?

A. Yes. 390 feet to the further curve.

Q. The balcony of the Colman dock is on the southerly face and not on the extreme point?

A. That balcony is right about there, there is one balcony there.

Q. There is a balcony along this face, this southerly face?

A. I think there is. I think the window comes down straight, just about near the end.

Q. This dock comes straight down at the end.

A. Yes sir.

Q. And the balcony is on the southerly face?

A. Yes, the balcony comes in about there.

REDIRECT EXAMINATION:

Q. (Mr. Bronson). One other question. Mr. Merritt asked you if a vessel leaving pier 5, north of pier 4, on this course, if it would be wider out into the bay at this point. I will ask you this question, if she left pier 5 and proceeded upon a steady course, curve, and was within 100 feet of the Grand Trunk dock at any given time, or within 200 feet of the Grand Trunk dock at any given time, whether or not she would proceed in describing the same degree of curve further south even than the lines suggested on this chart?

A. She would be further south.

Q. Whether she would be drawing a wider curve?

A. The curve would be changed, it would be flatter curve and would throw the vessel further south.

Q. (Mr. Merritt). If she ran straight down there she would go still further south?

A. Yes sir.

(Testimony of witness closed).

TESTIMONY CLOSED.

United States of America,
Western District of Washington, } ss.
Seattle, Washington.

I, A. C. Bowman, a Commissioner of the United States District Court for the Western District of Washington, residing at Seattle in said District, do hereby certify that

The foregoing transcript, from page 1 to page 542, contains all of the testimony given by the witnesses before me on the dates therein shown.

Said witnesses, before examination, were duly sworn to testify the truth, the whole truth and nothing but the truth. I reduced their testimony to writing, and hereby certify that the foregoing record contains a true transcript of their testimony.

Proctors for the respective parties stipulated that the testimony need not be read and signed by the witnesses, agreeing that the same should have the same force and effect as if so read and signed by them, when certified by me as correct.

I return the several exhibits offered by the parties, as shown by the index and transcript, with this record.

I further certify that I am not of counsel nor in any way interested in the result of this suit.

Witness my hand and official seal this 14th day of October, 1911.

(Seal)

A. C. BOWMAN,
U. S. Commissioner.

COMMISSIONER'S TAXABLE COSTS:

LIBELANT:

Hearings March 10, 16, 18, 23; April 24; August 29;	
Sept. 1 and 4, 8 days at \$3 per day.....	\$24.00
Administering oaths to 24 witnesses.....	2.40
Endorsing and filing 19 exhibits at 10c.....	1.90
Transcript of libelant's testimony, above hearings, 936	
folios at 10c	93.60
	<hr/>
	\$121.90

CLAIMANT'S:

Hearings April 23; May 5; July 8, 10, 12; October 13,	
1911, 6 days at \$3 per day.....	\$18.00
Administering oaths to 16 witnesses at 10c.....	1.60
Endorsing and filing 15 exhibits at 10c.....	1.50
Transcript above hearings, 690 folios at 10c a folio....	69.00
	<hr/>
	\$90.10

Endorsed: Testimony reported by U. S. Commissioner.
Filed in the U. S. District Court, Western Dist. of Washing-
ton. Oct. 20, 1911. A. W. Engle, Clerk.

*United States District Court, Western District of Washington.
Northern Division.*

KITSAP COUNTY TRANSPORTA- TION CO.,	}	No. 4484.
<i>vs.</i>		Filed.....
STEAMSHIP INDIANAPOLIS.		

MEMORANDUM DECISION ON THE MERITS.

A collision occurred in Seattle harbor, between the steamboats Kitsap and Indianapolis on a foggy evening in the month of December, 1910, whereby the Kitsap was sunk in deep water and the Indianapolis sustained minor injuries giving rise to claims for damages by the respective owners which are to be adjudicated in this suit. The Kitsap is a wooden passenger steamboat 135 feet in length and at the time of the collision was starting on her regular run from pier 4 in Seattle harbor to Paulsbo on the west side of Puget Sound. At 4:35 p. m. she backed away from the south side of pier 4 under a slow bell—the general direction of her backward movement being northwest; after backing sufficiently to clear the face of the docks she reversed and went ahead curving to starboard until she came around on her regular course headed for four-mile rock on the north shore of the harbor. The Indianapolis is a much larger vessel than the Kitsap and has a steel hull and was employed as a carrier of passengers on a regular run between Tacoma and Seattle. At 4:33 p. m. she was coming from Tacoma and near the bell buoy off Duwamish head on the west side of Seattle harbor and was running at reduced speed, but she then increased to full speed, which was fifteen knots per hour or approximately fifteen hundred feet per minute. From the time the Kitsap started both vessels were giving fog signals by blasts of their whistles at intervals of from ten to twenty seconds. The time of the collision was 4:40 p. m. The facts of the case as thus far recited are clearly proved by uncontradicted evidence. The evidence is conflicting as to the exact place where the collision occurred, but from a preponderance of the evidence the Court finds as a fact that the place

where the two vessels came in contact with each other was opposite the slip between the Grand Trunk and Colman docks and distant from the outward ends of the docks about 1500 feet and from the bell buoy off Duwamish Head, by measurement on the government chart of the harbor, nearly 10,500 feet, and to make that distance in seven minutes required the Indianapolis to run her maximum speed. No attempt was made on either vessel to avoid the collision by operating the helm to change her course so that when the vessels came together they were on converging lines—the Kitsap headed obliquely across the bow of the Indianapolis. The Indianapolis rammed the Kitsap on her port side in the vicinity of her pilot house and cut into her hull to a depth of about seven feet. The Court finds as a fact that, at the moment of the impact, both vessels were moving ahead with considerable momentum, and rejects as untrue all evidence to the contrary, because, the force of the collision corroborates the positive testimony on each side respectively, that the other vessel was seen to be coming with good speed and the conclusion is unavoidable that the collision was caused by navigating both vessels at a high rate of speed in a dense fog and both are equally in fault.

The items of the libellant's claim for damages are as follows:

Expense for salvage	\$12,712.20
Expense for repairs	12,313.00
Depreciation in value of machinery.....	1,500.00
Expense for survey.....	25.00
Expense for superintendence of repairs.....	566.67
Demurrage for 139 days at \$103 per day.....	14,317.00
Value of stores destroyed.....	100.00

The uncontradicted evidence proves the amount of expenditures as claimed for salvage and repairs and superintendence and those three items are legally chargeable. The item for cost of a survey is contested, but the Court allows it, because, it was in accordance with ordinary business prudence to have a survey of the Kitsap after she had been raised from the depths, in order to ascertain her condition and determine what repairs were necessary. It is the opinion of the Court

that the item of \$1500 for depreciation in value of the Kitsap's machinery by being submerged in salt water has not been proved, as an actual damage to that amount with certainty, and that item must be rejected on the authority of the cases of the *Robert Rickmers*, 142 Fed. Rep. 305; and *C. N. & I Co. v. Union Transportation Co.*, 176 Fed. Rep. 533. The claim for demurrage at the rate of \$103 per day is based upon the alleged charter value of the steamer Hyak, a sister ship to the Kitsap, which was employed as a substitute while the Kitsap was out of commission, but the evidence is insufficient to prove that the charter value of the Hyak for the period of time during which she was operated as a substitute exceeded the net earning capacity of the Kitsap, which by a stipulation is fixed at \$50 per day. Therefore, the Court allows demurrage at that rate for 139 days, upon the authority of the decisions of the Circuit Court of Appeals for the 9th Circuit in the cases of *The California*, 54 Fed. Rep. 404; *The Tremont*, 161 Fed. Rep. 1; and *The Europe*, 190 Fed. Rep. 475. The item of \$100 for stores is allowed, making the total of the Kitsap's damages, \$32,666.87.

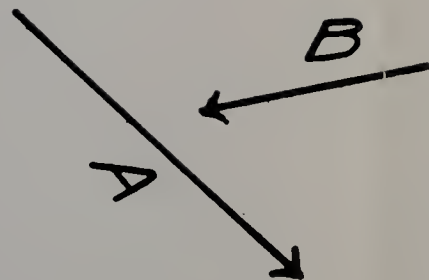
The Court allows damages in favor of the Cross-Libelant as follows:—

Cost of repairs	\$ 3,896.35
Expense for surveys	100.00
Demurrage for 8 days, including wages of crew, \$455.15, and loss of net earnings at rate of \$125 per day, as stipulated	1,455.15
Making the total of Cross-Libelant's damages.....	5,451.50
And the grand total of all damages to be divided equally	\$38,118.37

On this computation the libelant is entitled to a decree for \$13,608.18, and no costs. 5 *Enc. of Pl. & Pr.* 142.

C. H. HANFORD,
United States District Judge.

Endorsed: MEMORANDUM DECISION ON THE MERITS. Filed in the U. S. District Court, Western Dist. of Washington. May 28, 1912. A. W. Engle, Clerk. By S. Deputy.



Libellant's Ex. A

No. 4484.

United States District Court,
Western District of Washington,
Northern Division.

Kitsap County Transportation Co.,
Libellant,
v.
Str. "Indianapolis,"
Respondent.

Filed March, 1911.

A. C. Bowman,
U. S. Commissioner,
Western Dist. of Washington.

Filed in the
U. S. District Court,
Western Dist. of Washington,

Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.



Libellant's Ex. B

No. 4484.

United States District Court,
Western District of Washington,
Northern Division.

Kitsap County Transportation Co.,
Libellant,
v.
Str. "Indianapolis,"
Respondent.

Filed March 16, 1911.

A. C. Bowman,
U. S. Commissioner,
Western Dist. of Washington.

Filed in the
U. S. District Court,
Western Dist. of Washington,

Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.

LIBELLANT'S EXHIBIT C

MEMORANDUM OF AGREEMENT between ELLIOTT BAY DRY DOCK COMPANY of the one part and S. B. GIBBS, agent for the underwriters of the S. S. "KITSAP" of the second part, entered into this 27th day of December, 1910:

1. The party of the first part agrees to undertake to raise the Steamer "Kitsap," recently sunk in Elliott Bay, and to deliver same to the party of the second part, moored in the East Waterway, at the plant of the party of the first part; the party of the first part shall furnish all its own appliances and bear all the expense and all of the risk involved in such salvage operations.

2. In the event said Steamer is successfully raised and delivered as hereinabove stated, the party of the first part is to receive as compensation sixty per cent (60%) of the value of the vessel when so delivered and the party of the second part is to retain the forty per cent (40%) of such value; if said vessel when so salved is repaired, then the value when salved shall be determined by deducting the cost of repairs from the agreed valuation when repaired of Thirty-five Thousand Dollars (\$35,000.00). If it is found that said vessel is so damaged that she cannot be repaired at a cost less than the repaired value as stated above, then said party of the first part is to receive sixty per cent (60%) of whatever amount is realized from the wreck, whether by sale thereof, break up or otherwise.

3. Said party of the first part shall commence said salvage operations at once, and prosecute same diligently; unless said vessel is raised and delivered within thirty days from this date, this contract shall be considered annulled and cancelled at the option of the party of the second part.

ELLIOTT BAY DRY DOCK COMPANY,

By J. F. Swanberg, President.

S. B. GIBBS,

Acting for Underwriters.

The KITSAP COUNTY TRANSPORTATION COMPANY, owner of the S. S. "KITSAP," consents that the underwriters may enter into the foregoing agreement without prejudice to the rights of either the underwriters or the owner under the policies of insurance upon said Steamer.

Dated at Seattle, Washington, this 27th day of December, A. D. 1910.

BOGLE, MERRITT & BOGLE,

For Kitsap County Transportation Company, Owner.

Endorsed: Libellant's Exhibit "C." Filed March 8th, 1911. A. C. Bowman, U. S. Com'r. Filed in the U. S. District Court, Western Dist. of Washington, Oct. 21, 1911. A. W. Engle, Clerk.

Libellant's Ex. C

No. 4484.

United States District Court,
Western District of Washington,
Northern Division.

Kitsap County Transportation Co.,
Libellant,
v.
Str. "Indianapolis,"
Respondent.

Filed March 18, 1911.

A. C. Bowman,
U. S. Commissioner,
Western Dist. of Washington.

Filed in the
U. S. District Court,
Western Dist. of Washington,

Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.

LIBELLANT'S EXHIBIT D

SPECIFICATIONS FOR REPAIRS TO S. S. "KITSAP."

Tenders are hereby requested for the following repairs to the above named vessel:

HULL:

Rudder and stock to be removed, rudder stock straightened if practicable, if not renewed; rudder blade to be renewed, using the old braces. All to be installed in place and coupled up.

Rudder bearing plate under counter to be renewed. Pattern for plate is in possession of the Kitsap County Trans. Co.

Preventer tiller-chain bolt under counter to be renewed and refastened in place.

KEEL:

18 ft. of keel aft to be renewed, fitted with 6 ft. scarph and properly fastened in place.

Keel forward commencing at first scarph after forefoot to be renewed for a distance of 27 ft., fitted with 6 ft. scarphs and properly fastened. Keel scarphs to be fitted with stopwaters, one inside of garboard and one outside.

PORT SIDE PLANKING:

All planking in the way of damage abreast of forward hold to be renewed from garboard to main deck and from butt to butt, to be fastened in the same manner as before. This also includes sheer strake.

GUARDS:

Guards commencing at stem and extending aft to be renewed for a distance of about 68 ft., same to be in two pieces.

Iron bark facing pieces on guards to be renewed for a distance of about 78 ft. on port side and 44 ft. on stbd. side aft.

7 planks in the way of stbd. gangway to be smoothed up.

Iron bark facing to guard on port quarter to be smoothed up.

One graving piece to be fitted to plank under counter.

10 planks on stbd. side abreast of cargo gangway to be smoothed up.

SHOE:

New keel to be fitted with shoe extending 6 ft. beyond the scarphs. Bottom of keel and inside facing of shoe to have one coat of copper paint before being installed and to be fastened in same manner as old shoe.

The diagonal sheathing outside of frames to be removed where damaged and replaced by new, same material as before, Port Orchard cedar.

HULL INSIDE:

5 oak frames 5x4" to be installed in place of broken frames in the way of damage.

7 strakes of ceiling to be renewed and butts staggered in an approved manner, also one clamp strake and one shelf strake.

5 main deck beams to be entirely renewed.

1 main deck stringer port side to be renewed from butt to butt.

Drip pan under port oil tank to be rebuilt, sheathed with lead as before and made tight. Old lead sheathing to be used where practicable.

Wooden brace on after end of fuel tank to be renewed.

Port and stbd. oil tank to be tested and made tight if necessary and installed in place, and all piping and fittings to be repaired or renewed if necessary.

No. 2 bulkhead, port side, to be rebuilt to the door with 1" T. & G. seasoned lumber and lined with galv. iron.

MAIN DECK:

36 deck planks in the way of damage to be removed from butt to butt and replaced by new, seams calked and pitched. Deck sheathing in the way of cargo ports be entirely renewed.

Superstructures above main deck including all saloons, pilot house, bulwarks, rooms, etc., to be entirely renewed with the exception of sill plate on saloon deck aft, and railing and stanchions on main deck aft, about 10 ft. of this to be left but to be stripped of all panels, sheathing and mouldings, these to be replaced by new. All superstructures mentioned above rebuilt to conform with the cabins, saloons and houses of the S. S. "Hyak," plans of which are to be furnished by owners. Attention is called to the fact that the houses of the "Kitsap" are 5 ft. shorter than the "Hyak."

FOREMAST:

New foremast to be installed, fitted with stays and shrouds of size and dimensions of S. S. "Hyak," rigging to be set up in place.

Cargo platform for saloon deck to be made and installed same size and general form as platform on S. S. "Hyak."

Saloon deck, top of saloon deck and top of pilot house to be covered with canvas to conform with that on the "Hyak," same to have 3 coats of approved paint.

Seats around saloon deck attached to houses to be made of dressed $1\frac{1}{4}$ " planks 12" in width swung on hinges and chains. Bolts for chains to extend right through stanchions and fastened on the inside with screw nuts and washers. Planks to be reinforced with suitable cleats and fastened with brass screws. All other outside seats to be made of $1\frac{1}{4}$ "x12 No. 1 kiln dried fir, supported by suitable braces and stanchions.

Life preserver racks, freight and passenger gangways to be supplied same as those on S. S. "Hyak."

NOTE—All sills, studding, ceiling and girders to be of same scantling as before. All sheathing, mouldings, siding, etc., used in the construction of deck houses, cabins, bulkheads, rooms, etc., to be of kiln dried selected lumber.

BOAT DAVITS:

4 old boat davits to be straightened and installed and 4 new ones supplied one ft. longer than old davits, all to be fitted in place with sockets, guys, spans, blocks and tackles, all to conform with U. S. Inspection laws.

VENTILATORS:

2 new ventilators to be installed in fuel oil room and 2 in boiler room same size and quality as those now on board, using such parts of old ventilators as practical.

Wheel and steering gear to be installed and of same size and quality as that of the "Hyak."

NOTE—All cleats, cavils and chocks undamaged to be used in new construction.

CALKING:

Butts on bottom, hood ends forward and aft and garboard seams in the way of new keel and all new planking to be thoroughly calked and seams cemented.

PAINTING :

Planking between guard and copper paint, old paint to be scraped off and given two coats of approved paint, colors as desired. New work on bottom to be given two coats of Woolsey's copper paint, remaining portion of bottom one coat. All new and repaired work above main deck to be given three coats of approved paint best quality zinc, lead and oil. Iron work two coats of composition paint.

ENGINE ROOM, BOILER ROOM AND HOLD :

To be thoroughly cleaned and given two coats of approved paint where painted before. Engine room and boiler room floors to be lifted where practicable and bilges cleaned.

MAIN ENGINES AND AUXILIARIES :

To be thoroughly cleaned, overhauled and all parts to be put in good working order.

Condenser heads to be removed, water spaces cleaned and heads replaced.

Air pump to be cleaned, overhauled and put in good working order. Hot well to be cleaned out.

Asbestos covering on all steam pipes with the exception of main steam and exhaust pipe to be renewed.

All steam gauges not of brass to be renewed, brass gauges to be overhauled, repaired and tested.

All bent and broken pipes and valves in engine and boiler rooms to be repaired and renewed where necessary.

Tail shaft to be drawn, examined and returned to place and all shafting tested for alignment.

All parts of engines and auxiliaries previously painted to be thoroughly cleaned and given one coat of paint.

DYNAMO :

Fields and armatures to be rewound, commutator to be re-insulated and all parts to be put in good working order. Switchboard to be thoroughly cleaned, overhauled, including all fittings. Rheostat to be thoroughly cleaned and overhauled and put in good working order.

Electric wiring throughout the ship to be entirely renewed as per insulation now on S. S. "Hyak," including all lights and fixtures.

MAIN BOILER:

To be thoroughly cleaned outside and in, outside casing to be given one coat of approved paint. Grate bars to be covered with $\frac{1}{2}$ " mill boards leaving a space of 2 ft. square in front of each door, mill boards to be covered with fire brick. Ash pan sides to be bricked up. Top and one side of boiler casing now removed to be replaced. Four rows of tubes in top drum to be lightly rolled (amidship rows). Asbestos baffles on inside of furnace to be renewed. Fire clay in ash pan to be renewed. Asbestos mill board on forward and after end of casing to be renewed.

DONKEY BOILER:

To be thoroughly cleaned and put in working order and smokestack connected as before.

Machine oil tank now on board to be installed in place.

Two wooden truss braces on port side of fire room to be refastened, also one iron brace to feed water heater.

All steam syphons and discharges to be overhauled and renewed where necessary. Fire extinguishing pipes to be overhauled and put in good working order.

New portion of smokestack to conform with portion now on board of same quality, general dimensions and fittings as that on "Hyak" to be installed.

New 8" chime whistle 20" long to be supplied, installed and connected to conform with U. S. regulations.

Hoisting engine on main deck forward to be cleaned, overhauled and steam pipe repaired and renewed where broken and connected with main boiler.

Attached to these specifications and forming a part of same is a list of the equipment which is to be supplied and installed in place on board, a duplicate of which can be seen on board S. S. "Hyak."

After repairs are completed a test trial of 2 hours on Puget Sound will be made to determine the efficiency of all machinery. Expense of trial to be borne by contractor.

CONDITIONS.

Vessel is now on the Elliott Bay Dry Dock Co.'s dock, where she can be seen by intending bidders.

It is understood that the successful bidder is to take the vessel from where she now lies all at their risk and expense and upon completion of repairs to return her to Kitsap County Transportation Co.'s dock at Pier 4. The successful bidder has the privilege of making temporary repairs to enable her to be floated on the dock where she now lies.

All work to be done to the satisfaction of owner's representative and surveyors appointed, and all material used to be of good quality. No extras of any nature whatsoever will be allowed unless previously agreed upon in writing between parties interested.

Any portion of vessel removed for the purpose of carrying out any of the above enumerated repairs to be replaced as before at contractor's expense.

All dirt and rubbish accumulated during the course of repairs to be removed by the contractor, and all old material to become the property of contractor.

The right is hereby reserved to reject any or all tenders, and any tender not complying with the above requirements will not be given consideration.

A bond of \$25,000 will be required from the successful contractor for carrying out the above enumerated repairs as per specifications and guaranteeing the safe delivery of the vessel to the owners after repairs are completed.

A penalty of \$100 per day will be exacted for every day of 24 hours each in excess of the time specified in the tender, and a bonus of \$25.00 a day for every day of 24 hours will be paid by owner for every day under specified time named in tender.

The bonus and penalty applies to working days.

Sealed tenders distinctly stating price and time required for the full and proper performance of the work to be submitted to Mr. W. L. Gazzam, Pres. of Kitsap County Transportation Co. at the office of Board of Marine Underwriters, 517 Colman Bldg., Seattle, by 12 o'clock noon Feb. 18th, Saturday. Time to commence from date of award of contract.

Seattle, Feb. 15, 1911.

Approved by

S. B. GIBBS,
T. W. C. SPENCER.

PILOT HOUSE.

- 1 ship's clock.
- 1 brass compass complete.
- 1 search light complete.
- 1 binnacle light.
- 1 steering wheel with brass rope fastenings.
- 1 pr. field glasses.
- 1 deck bell 8".
- 1 log book light.
- 1 clock light.
- 1 barometer 4" face.
- 1 fire ax and rack.
- 1 log book.
- 1 course book.
- 2 electric lights not otherwise listed.
 - Straps on windows for raising.
- 5 frames for ship's paper "Pilot Rules," etc.
- 2 brass signs "Pilot House."
 - Brass locks on doors.
- 2 electric buttons.
 - 1 deck bell.
 - 1 forecastle bell
- 1 brass cuspidor.
- 1 water pitcher.
- 1 water glass.
- 1 steam heater under floor.
- 1 key for each door and hook to hang them on.
- 5 switches for lights.
 - 2 deck lights—port and stbd.
 - 1 hurricane deck.
 - 1 masthead light.
 - 1 side light.
- Linoleum on floor—German inlaid.
- 2 bell pulls—1 each side pilot house.
- 1 jingle pull.
- 1 sounding tube from engine room.
- 1 speaking tube complete with whistle and holder.
- 1 pilot house umbrella 18" wide—iron frame and canvas cover.
- 1 sign for front of pilot house "Kitsap."

- 1 set whistle ropes with brass pulleys.
- 1 megaphone.
- 3 counters.
- 3 door mats.
- 1 brass headlight.
- 2 brass side lights.
- 3 electric lights—outside deck.
- 1 hand fog horn.
- 1 shelf for books.
- 1 set signal flags.
- 1 set house flags.
 - Company flag.
 - House flag.
 - U. S. flag.
 - Jack.

TEXAS—ENGINEERS—CAPTAIN AND MATES ROOM.

- 1 roll top desk.
- 1 corner wash stand with porcelain wash basin.
- 1 water pitcher.
- 2 water bottles.
- 2 water glasses.
- 3 good chairs.
- 2 steam heaters.
- 2 looking glasses 12"x16".
- 1 whisk broom.
- Linoleum on floor of each room.
- 4 coal oil bracket lamps complete with top shield—brass
- Car curtains on all windows.
- 4 brass signs.
 - 1 "Office."
 - 1 "Mate."
 - 1 "Chief Engineer."
 - 1 "Captain."
- 1 brass Pullman lock each door.
- 1 key for each door and hook.
- 2 towel racks.
- 6 electric lights.
- 24 coat hooks.
- 1 large door mat.
- 1 bunk—each officer's room $\frac{3}{4}$ size.

- 1 bunk—each officer's room $\frac{1}{2}$ size.
- 2 drawers under each lower bunk.
- 3 rugs for floor—each officer's room.
- 6 bed spreads.
- 24 sheets.
- 12 prs. blankets.
- 6 pillows.
- 12 pillow slips.
- 6 cotton mattresses.
- 6 springs with supports.
- Brass nosing on steps Texas to wheel house.
- 1 sliding door between Texas and wheel house.
- Linoleum on steps.
- 6 roller towels.
- 6 hand towels.

HURRICANE DECK.

- 2 metal lifeboats—each 100 cu. ft. fully equipped with oars, oar locks with chains attached, etc., according to rules and regulations Board of Supervising Inspectors.
- 2 wood lifeboats—100 cu. ft. each fully equipped as above.
- Now on board. To be overhauled, equipped and painted.
- 1 set saddles for each boat.
- 1 set boat davits—each boat now on board.
- 1 set gear complete—blocks, falls, etc.
- 1 working boat complete. Now on board. To be overhauled and painted.
- 1 life raft—fully equipped according to rules and regulations.
- 1 powder magazine—galv. iron lined $2 \times 2 \times 2\frac{1}{2}$.
- 1 boat cover with frames for each boat.
- 1 quadrant for rudder stock. Now on board.
- 2 ventilators for fire room. Now on board.
- 1 sign "Kitsap" for pilot house.
- Blocks and leads for quadrant.
- Bearing in deck for rudder stock. Now on board.
- Rigging with Jack and flag staffs.
- 1 collar on smokestack—same as original with letter "K."
- Gratings on deck for handling passenger plank.
- 1 oak passenger plank with two life lines.
- 1 iron ladder to top of Texas.
- 2 deck ladders.

- 1 double pipe railing around forward part of deck.
- Sheet lead around covering boards.
- 1 rack for life preservers.
- 4 electric lights for lighting deck with outside globes.
- 1 rack for fire bucket.
- 8 fire buckets.
- 2 crates camp stools—12 each crate.

PASSENGER DECK.

- 1 anchor davit forward.
- 1 cork fender.
- 1 anchor—175 lbs.
- 1 anchor chain 300' with cleavices, etc., 5 fths. in board—
cleaned and painted.
- 1 set block and falls on davit for handling anchor. Now on
board.

Gratings on forward deck for freight.

- 1 head line—100 ft. 4". Now on board.
- 6 gratings—1 each door to cabin.
- 6 gates in rail.
- 1 rack for life preservers.
- 1 oak freight chute.
- 1 fire ax.
- 1 canvas curtain for forward window on cabin.
- 2 ventilators for oil room. Now on board.
- Steps to hurricane deck with rubber tread and brass nosing.
- Electric lights on outside of cabin for lighting deck and
glasses for same.
- 1 set relief tack for steering gear.

PASSENGER DECK INSIDE.

- 2 baggage and life preserver racks with pipe railing and
linoleum.
- Linoleum on passenger cabin floor.
- 2 steam heaters with guards.
- 1 enamel sign "Ladies Toilet."
- Car curtains on all windows.
- 3 signs "No Smoking."
- 3 signs "No lurching in this cabin."
- 59 leather seats.
- 1 half circle seat forward.

- 2 straight seats aft.
- 6 door mats.
- 2 gum machines.
- 1 brass Pullman lock each door with key and hook for each.
- 9 frames for papers and notices.
- Electric lights for cabin with glass globes.

LADIES TOILET

- 1 corner wash stand with water connections.
- 2 toilet bowls.
- 1 soap dish.
- 1 looking glass 12"x16".
- 2 paper fixtures.
- 1 towel roller.
- 3 electric lights.
- 3 brass clothes hooks.
- 2 life rings with lines and canvas holders.
- 1 water cooler with drainage connections, bracket and cup with chain attached.
- 4 heaving lines.
- 3 fire extinguishers.

MAIN DECK.

- 1 anchor line 300' 4 1/2".
- 1 anchor 250 lbs.
- 1 ice chest.
- 1 vegetable locker.
- 1 supply locker.
- 1 galv. wash tub.
- 6 large iron hangers for ropes, etc.
- 12 meat hooks.
- 1 jack screw 14".
- 1 grab hook and 100 ft. of line.
- 6 galv. buckets.
- 4 mops and sticks.
- 6 deck brooms.
- 1 barn push broom.
- 2 water barrels with wood covers.
- 2 drinking cups.
- 1 wash basin corner porcelain lined with drain connections.
- Piping for water tanks and barrels with necessary valves and outside connections.

- 4 grain trucks with bridles and trippers. Now on board. To be cleaned and painted.
- 1 heavy freight plank—bridge style with lines for handling and fastenings.
- 2 heavy brick boxes.
- 1 truck crotch.
- 3 truck backs.
- 4 iron freight dogs.
- 4 snatch blocks—1 10"—2 6"—1 4".
- 1 winch. Now on board.
- 1 winch cable. Now on board.
- 6 cold blast lanterns.
- 1 rack for buckets.
- 1 piece sprocket chain with hook attached. Now on board.
- 1 hook line 75 ft. complete.
- 1 sledge. Now on board.
- 2 raising boards iron.
- 4 pipe freight rollers 2"x3' long.
- 2 crow bars, one on board.
- 1 capstan and 3 bars.
- 1 scoop shovel.
- 1 cross cut and one rip saw.
- 1 hammer.
- 1 set of 4 chisels (carpenter's).
- 1 set bitts Jennings.
- 2 planes.
- 1 marlin spike.
- 1 fid.
- 1 extension cord and socket and light complete 30 ft.
- 1 ring in deck for winch cable.
- 4 iron pins on deck or cavils for fastening freight plank.
- 1 set freight gates.
- 6 hay hooks.
- 2 iron hangers for swinging planks, etc.
- 2 strongbacks for freight doors.
- 2 spring lines 100 ft. each 5½".
- Slats for life preservers.
- 250' 1½" fire hose with couplings.
- Spanners for each length of hose.
- 12 roller towels.

12 hand towels.

1 looking glass 12"x16".

20 electric lights on freight deck.

1 mop bucket with patent wringer.

1 bench and vice. Now on board. To be cleaned.

1 midship line 75 ft. 5".

Hose hangers for all hose both decks.

1 sign for each door—"Smoking room" and "Men's Toilet."

1 water cooler with drainage connections.

2 drinking cups.

2 powder fire extinguishers.

PURSER'S ROOM.

1 bunk.

1 built in desk.

1 cash drawer.

1 brass lock on door.

1 Yale lock on door.

1 key each lock.

1 set pigeon holes.

1 cotton mattress.

1 sign "Purser."

1 spring.

1 set drawers under bunk.

1 coal oil bracket lamp complete.

1 electric light.

1 looking glass 12"x16".

1 pillow.

2 pillow slips.

2 prs. blankets.

2 bed spreads.

4 sheets.

1 chair.

Linoleum on floor.

1 rug for floor.

6 clothes hooks.

Car curtains on windows.

1 punch.

MEN'S TOILET.

1 looking glass 12"x16".

1 corner wash basin with plumbing connections.

- 1 soap rack.
- 1 towel rack.
- 6 roller towels.
- 2 paper holders.
- 1 case toilet paper.
- 2 cuspidors.
- 1 urinal with connections.
- 2 closet bowls.

SMOKING ROOM.

- 12 iron cuspidors porcelain lined.
- 2 card tables and 4 stools.
- Car curtains for all windows.
- Seats for smoking room with racks for life preservers.
- 14 electric lights.
- 1 steam heater.
- 1 fire ax and rack.

FORECASTLE AND GLORY HOLD

- 8 bunks, 8 springs, 8 slabs, 8 pillows.
- 2 electric lights.
- 1 bracket lamp complete.
- 2 —4" electric bells from pilot house.

GALLEY.

- 1 6 hole galley range. Now on board. To be overhauled and connected as before.
- 1 hot water tank. Now on board. To be overhauled and connected as before.
- 3 coffee pots various sizes.
- 1 large boiling pot granite.
- 6 frying pans for eggs.
- 2 medium size frying pans.
- 3 large size frying pans.
- 1 large baking pan.
- 3 medium size baking pans.
- 2 granite dish pans.
- 1 granite double boiler large size.
- 1 toast rack.
- 1 set 12 muffin tins.
- 1 collander large.
- 6 assorted stew pans granite.

- 1 alarm clock.
- 1 coal scuttle.
- 1 fire shovel.
- 1 stove scraper.
- 1 stove lift.
- 1 clinker breaker.
- 1 large salt holder.
- 1 bracket lamp complete.
- 1 meat grinder.
- 1 dinner bell 6".
- 1 10 lb. coffee holder.
- 1 tea caddy 2 lb.
- 1 bread box.
- 1 flour bin.
- 1 sugar bin.
- 1 rack for dishes.
- 1 set covers for pots, etc.
- 1 large skillet for steaks, etc.
- 1 skimmer.
- 1 strainer.
- 1 soup ladel.
- 1 bean crock.
- 1 pump
- 1 sink.
- 1 cutting board.
- 1 flour sifter.
- 1 iron kettle.
- 1 large grater
- 1 large pepper can.
- 1 egg beater, wire.
- 1 can opener.
- 1 dough cutter
- 2 large carving knives.
- 1 hot cake griddle.
- 1 pancake turner.
- 1 bread knife.
- 2 fruit knives.
- 1 qt. measure.
- 2 1 gal. cans (milk).
- 6 pie tins.

- 3 cake tins.
- 18 dinner plates.
- 18 cups.
- 18 saucers.
- 12 soup plates.
- 12 mush bowls.
- 12 sauce dishes.
- 12 pie plates.
- 12 water glasses.
- 2 water pitchers.
- 3 large platters.
- 3 medium platters.
- 4 vegetable dishes.
- 2 gravy dishes.
- 2 milk pitchers.
- 2 syrup jugs.
- 2 vinegar crenets.
- 3 salt shakers.
- 3 pepper shakers.
- 2 toothpick holders.
- 2 bracket lamps complete for dining room.
- 6 coat hooks.
- 1 match holder.
- 1 galley table, oil cloth for same.
- 8 stools for dining room.
- 2 meat saws.
- 1 cleaver.
- 1 steel knife sharpener.
- 18 table knives.
- 18 table forks.
- 36 spoons.
- 6 tablespoons.
- 12 soup spoons.
- 1 large meat fork.
- 2 squeegee.
- 1 hair push broom.
- 1 dust pan.
- 1 plumber's friend.
- 1 swab.
- 1 window brush.

- 1 brass stencil "Kitsap."
- 1 brass stencil "Life preservers" 2" letters.
- 1 extra rack for life preservers equipment as required by rules of Board of Supervising Inspectors.
- 325 life preservers.

ENGINE ROOM EQUIPMENT.

- 1 extension light with 100 ft. marine cord.
- 1 25' extension light.
- 12 fuses for switchboard.
- 6 $\frac{5}{8}$ " eye bolts. 5 now on board.
- 3 door mats.
- 1 slice bar. Now on board.
- 1 50 gal. oil tank. Now on board.
- 1 wood clamp. Now on board.
- 30 solid wrenches $\frac{1}{4}$ " to 2". 24 now on board.
- 1 24" stillson wrench.
- 1 18" stillson wrench.
- 3 14" stillson wrenches
- 2 10" stillson wrenches.
- 1 8" stillson wrench.
- 2 6" stillson wrenches.
- 3 now on board.
- 1 24" monkey wrench.
- 1 18" monkey wrench.
- 2 12" monkey wrenches.
- 1 8" monkey wrench.
- 2 6" monkey wrenches. 1 now on board.
- 8 spanners for engine 6 now on board.
- 15 socket wrenches. Now on board.
- 2 pr. callipers 6" 1 inside, 1 outside.
- 1 set babbitt scrapers.
- 1 wire gauge.
- 3 screw drivers, 1 now on board.
- 2 hack saw frames.
- 12 hack saw blades.
- 2 prs. tin shears.
- 2 pr. wire pliers.
- 1 pinch bar.
- 1 crow bar.

- 3 machinist hammers. Now on board.
- 2 copper hammers, 1 now on board.
- 1 button set. Now on board.
- 1 sledge.
- 15 assorted chisels, 1 now on board.
- 3 packing hooks.
- 3 packing screws.
- 3 punches, 1 now on board.
- 2 small jack screws, 1 now on board.
- 1/2 ton chain tackle.
- 1 wrench for propeller wheel. Now on board.
- 1 thread gauge.
- 1 feeler gauge.
- 4 S. & P. burners. Now on board.
- 6 files, asstd.
- 2 glass cutters.
- 12 glasses 3/4"x14".
- 24 rubber gaskets.
- 1 spool lead wire.
- 1 pr. dividers.
- 6 squirt cans.
- 3 oil fillers.
- 6 swab brushes.
- 3 5-gal. galv. oil cans.
- 2 large funnels.
- 1 small funnel.
- 2 fire shovels.
- 2 ash hoes. Now on board.
- 1 ash hoe, small. Now on board.
- 4 galv. buckets.
- 1 galv. coal oil can, 1 gal.
- 50 ft. 4-ply steam hose.
- 2 lanterns.
- 1 ax. Now on board.
- 160 condenser tubes.
- 1 3" extension bitt.
- 1 canvas dynamo cover.
- 1 set drills 1/8" to 3/4".
- 2 spools copper wire 1/4 lb.
- 3 paint brushes.
- 2 lamps.

Endorsed: Libellant's Ex. "D." Filed March 8, 1911. A.
C. Bowman, U. S. Com'r. Filed in the U. S. District Court,
Western Dist. of Washington.

Libellant's Ex. D

No. 4484.

United States District Court,
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Northern Division.

Kitsap County Transportation Co.,
Libellant,

v.

Str. "Indianapolis,"

Respondent.

Filed March 18, 1911.

A. C. Bowman,
U. S. Commissioner,
Western Dist. of Washington.

Filed in the
U. S. District Court,
Western Dist. of Washington,

Oct. 21, 1911.

A. W. Engle, Clerk.

By Deputy.

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Libellant's Ex. E

No. 4484.

United States District Court,
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Libellant's Ex. F

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Libellant's Ex. G

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Libellant's Ex. II

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By.....Depnty.



Libellant's Ex. I

No. 4484.

United States District Court,
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Kitsap County Transportation Co.,
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Filed Aug. 29, 1911.

A. C. Bowman,
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Western Dist. of Washington.

Filed in the
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A. W. Engle, Clerk.

By.....Deputy.

Libellant's Ex. J

No. 4484.

United States District Court,
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Kitsap County Transportation Co.,
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Str. "Indianapolis,"
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Filed Aug. 29, 1911.

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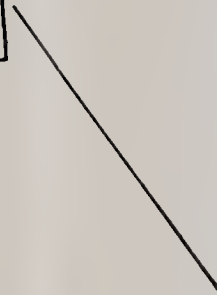
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Oct. 21, 1911.

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By.....Deputy.

Pier 4



Libellant's Ex. K

No. 4484.

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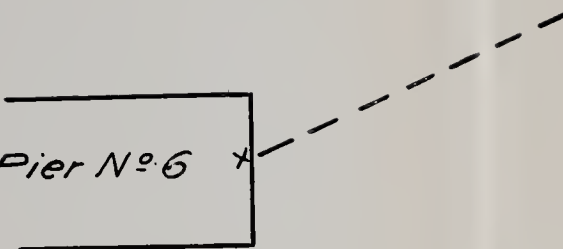
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Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.

Pier N°6 *

A hand-drawn diagram consisting of a rectangular box. Inside the box, the text "Pier N°6" is written in a cursive script. A small asterisk is placed at the right edge of the box. A dashed line extends from the asterisk, sloping upwards and to the right.

Libellant's Ex. L

No. 4484.

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By.....Deputy.



Libellant's Ex. M

No. 4484.

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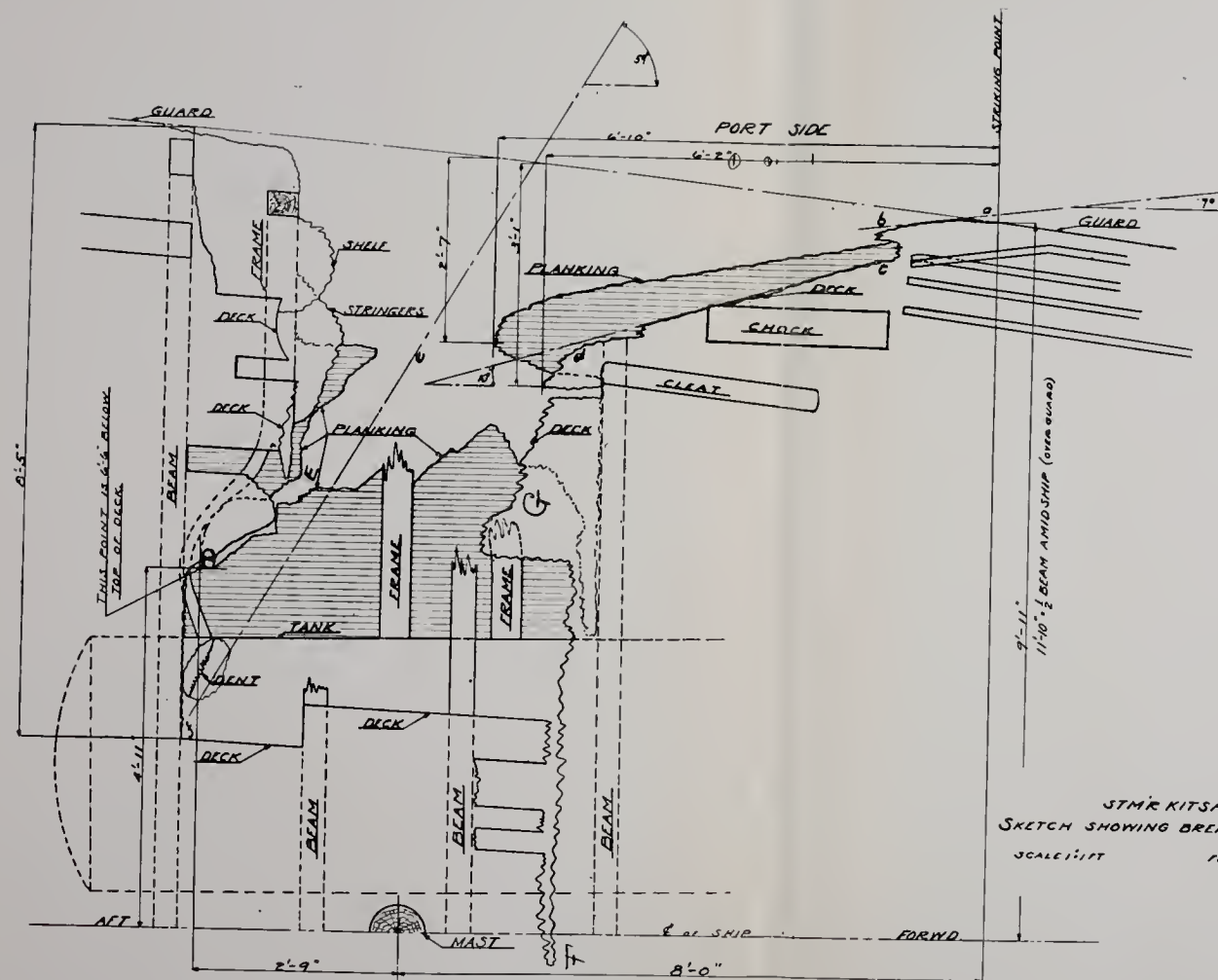
A. C. Bowman,
U. S. Commissioner,
Western Dist. of Washington.

Filed in the
U. S. District Court,
Western Dist. of Washington,

Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.



PLAN VIEW AT MAIN DECK.

STMR KITSAP
 SKETCH SHOWING BREAK IN SIDE.

SCALE 1/2" = 1 FT

FEB 15, 1911

No. 4484.

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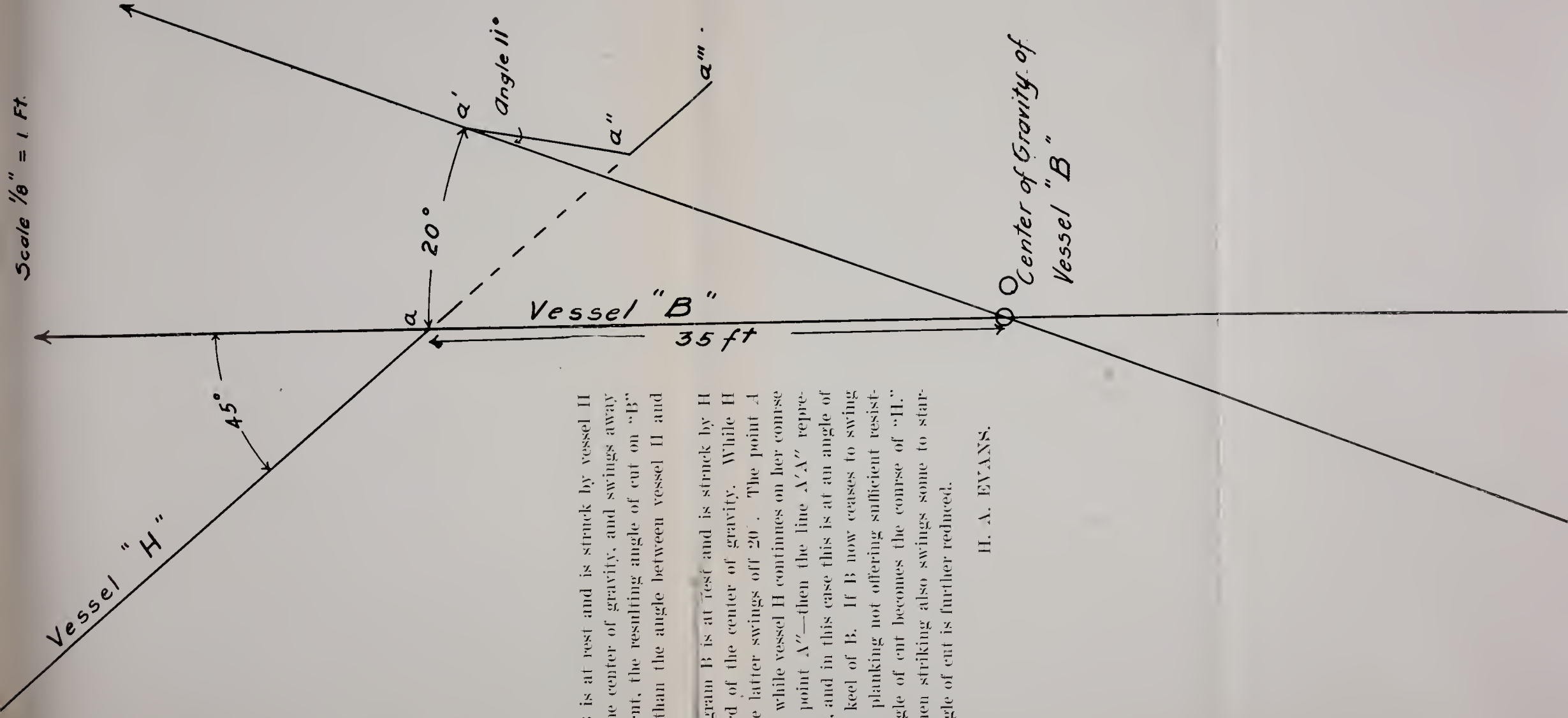
A. C. Bowman,
U. S. Commissioner,
Western Dist. of Washington.

Filed in the
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Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.



If vessel B is at rest and is struck by vessel H forward of the center of gravity, and swings away while being cut, the resulting angle of cut on "B" will be less than the angle between vessel H and vessel B.

In the diagram B is at rest and is struck by H 35 ft. forward of the center of gravity. While H cuts in B the latter swings off 20°. The point A swings to A', while vessel H continues on her course cutting to a point A''—then the line A'A'' represents the cut, and in this case this is at an angle of 11° with the keel of B. If B now ceases to swing owing to the planking not offering sufficient resistance, the angle of cut becomes the course of "H."

If "H" when striking also swings some to starboard the angle of cut is further reduced.

H. A. EVANS.

Libellant's Ex. O

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LIBELLANT'S EXHIBIT P

A Wooden Model

Libellant's Ex. P

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LIBELLANT'S EXHIBIT Q

A Wooden Model

Libellant's Ex. Q

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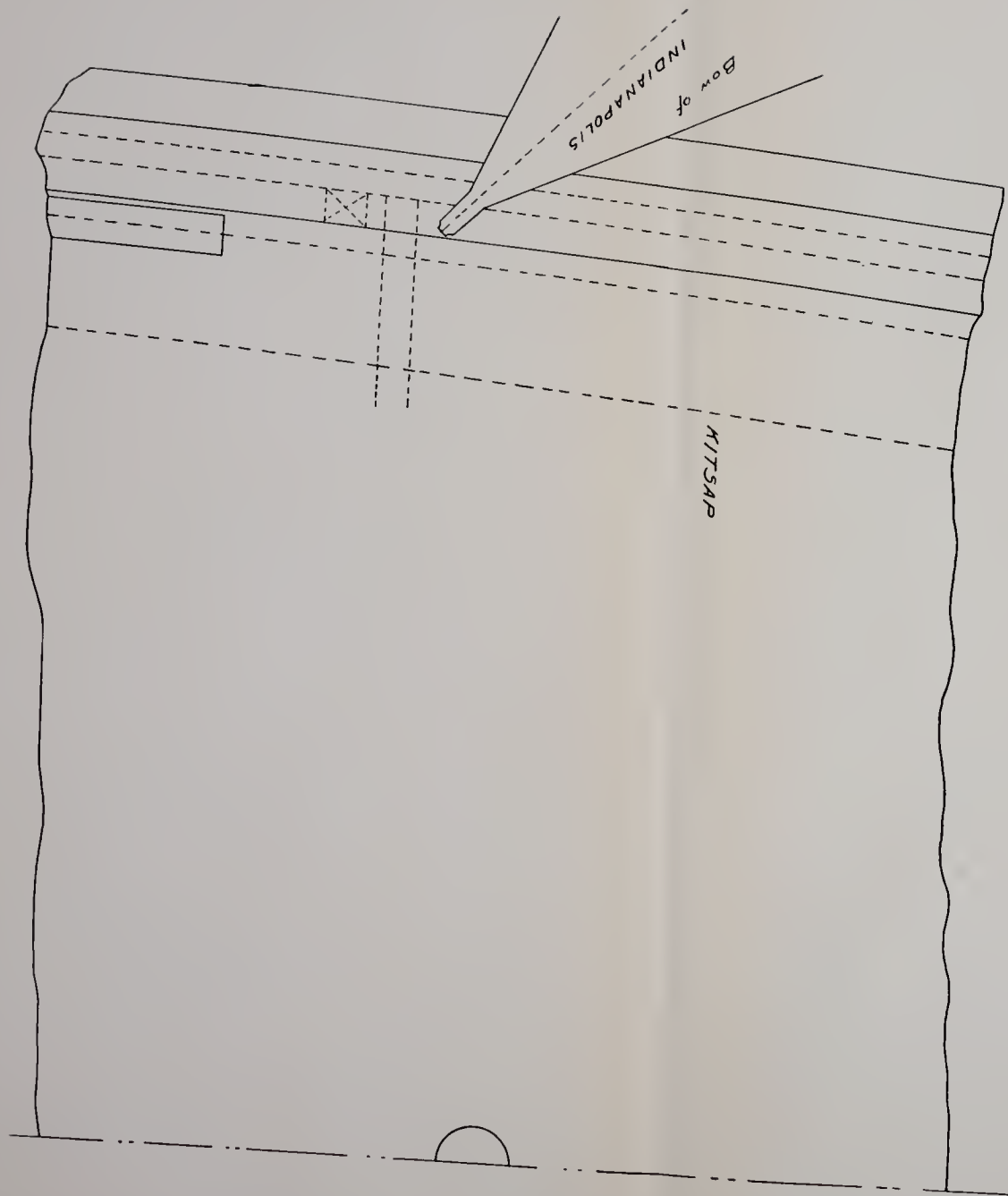
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By.....Deputy.

Sketch showing damage to
 1) Kitsap's gun
 Indianapolis, Ind. and its stationary
 Kitsap - bow does not enter the harbour
 as shown - very different from actual
 damage to Kitsap - Damage did
 not take place in the manner shown
 in the sketch - H. U. Evans

Striking Point

Indianapolis
 in sketch

Line of sight
 from the
 direction of Kitsap

KITSAP Scale $\frac{1}{8}" = 1 \text{ foot}$

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Filed April 24, 1911.

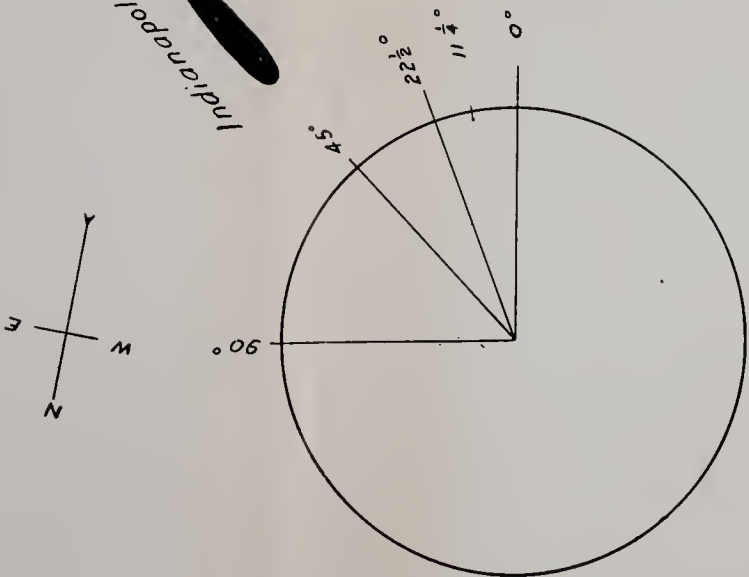
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A. W. Engle, Clerk.

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Position when Kitsap
first hove in sight.

Indianapolis
Kitsap



Distance from
South side P 4 to G.T.P.

16) 6080 (380
488 3
128 1140 ft = $\frac{3}{16}$
128.

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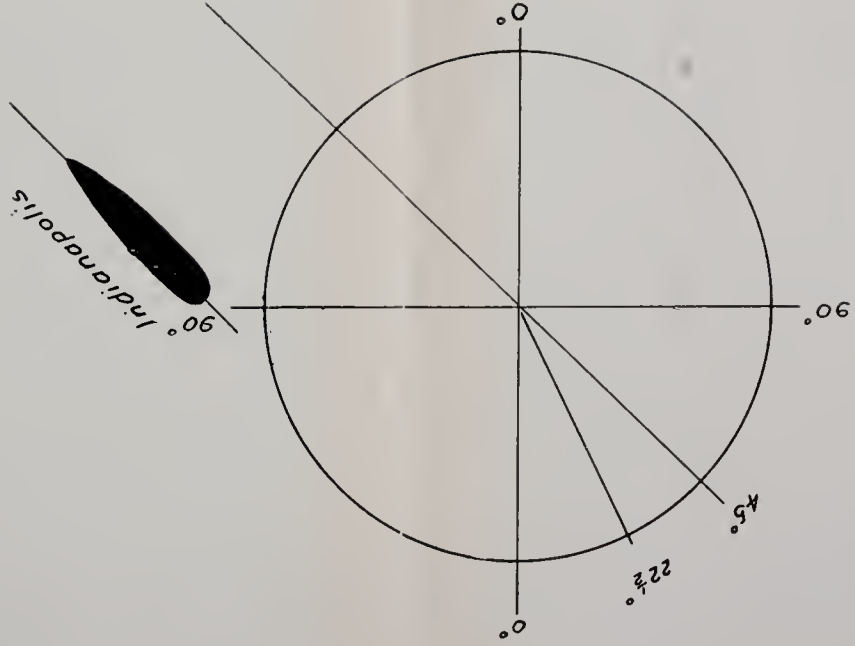
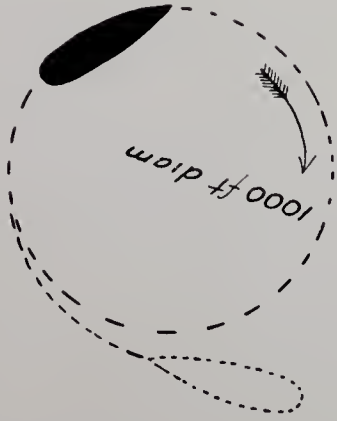
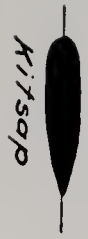
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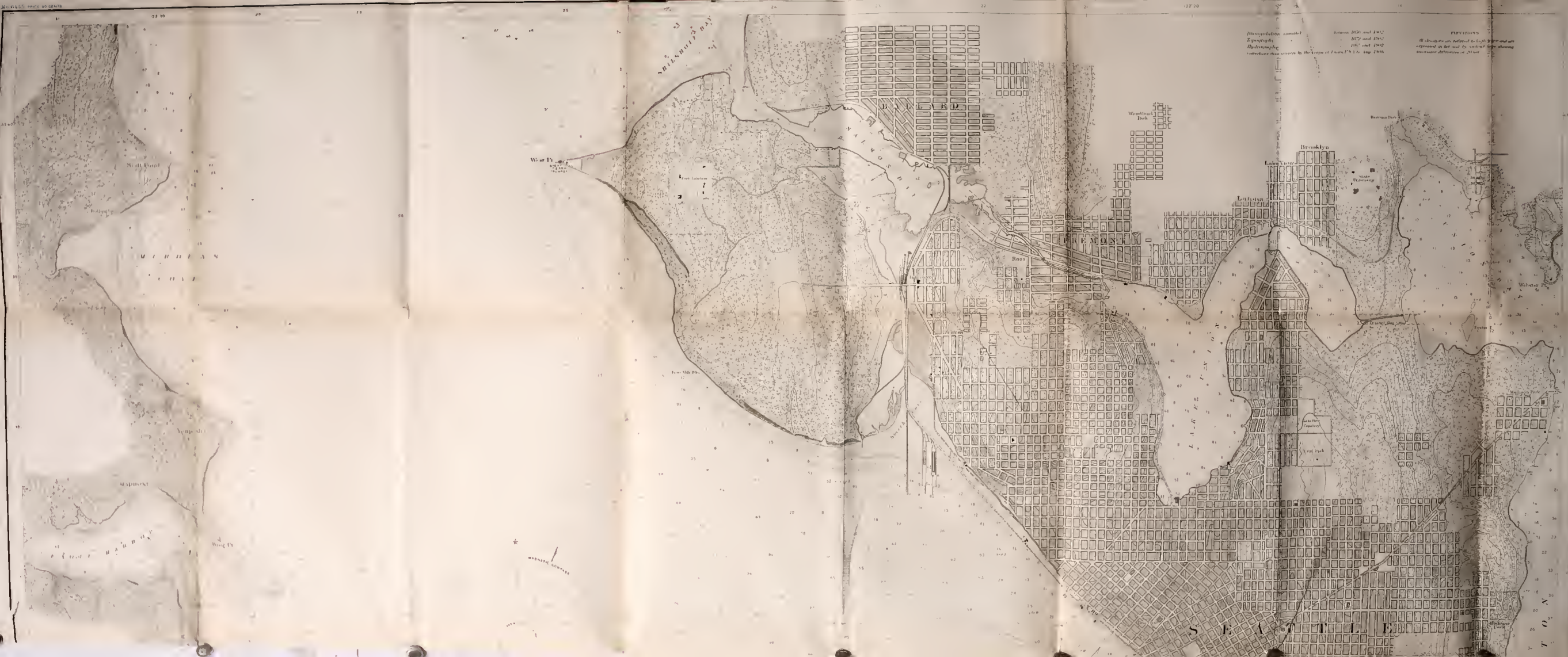
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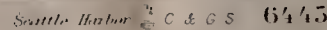
Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Depnty.







Claimant's Ex. 4

No. 4484.

United States District Court,
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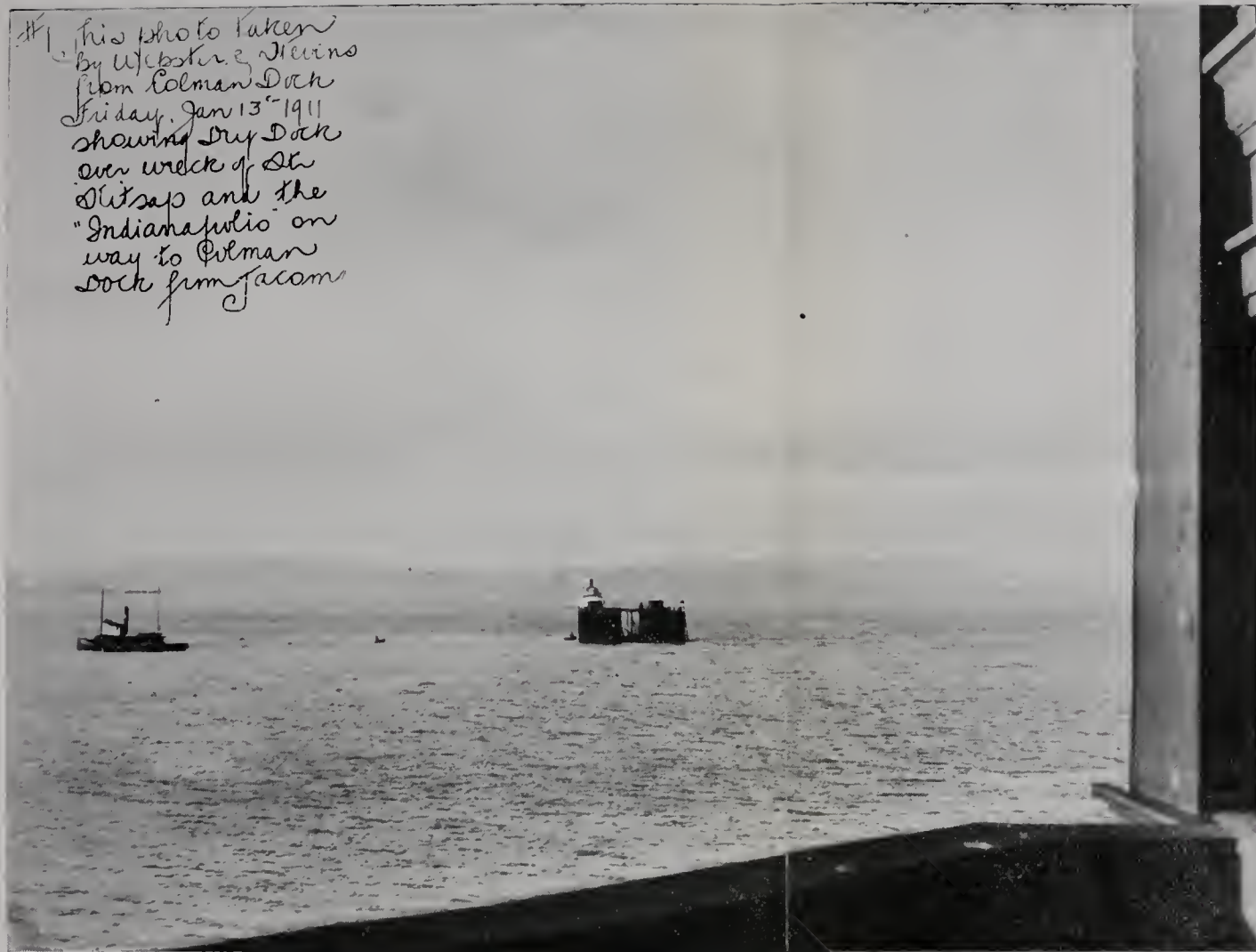
Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.



#1. This photo taken
by Webster & Herms
from Colman Dock
Friday, Jan 13th 1911
showing Dry Dock
over wreck of the
"Itasca" and the
"Indianapolis" on
way to Colman
Dock from Tacoma



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Filed May 5, 1911.

A. C. Bowman,
U. S. Commissioner,
Western Dist. of Washington.

Filed in the
U. S. District Court,
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Oct. 21, 1911.

A. W. Engle, Clerk.

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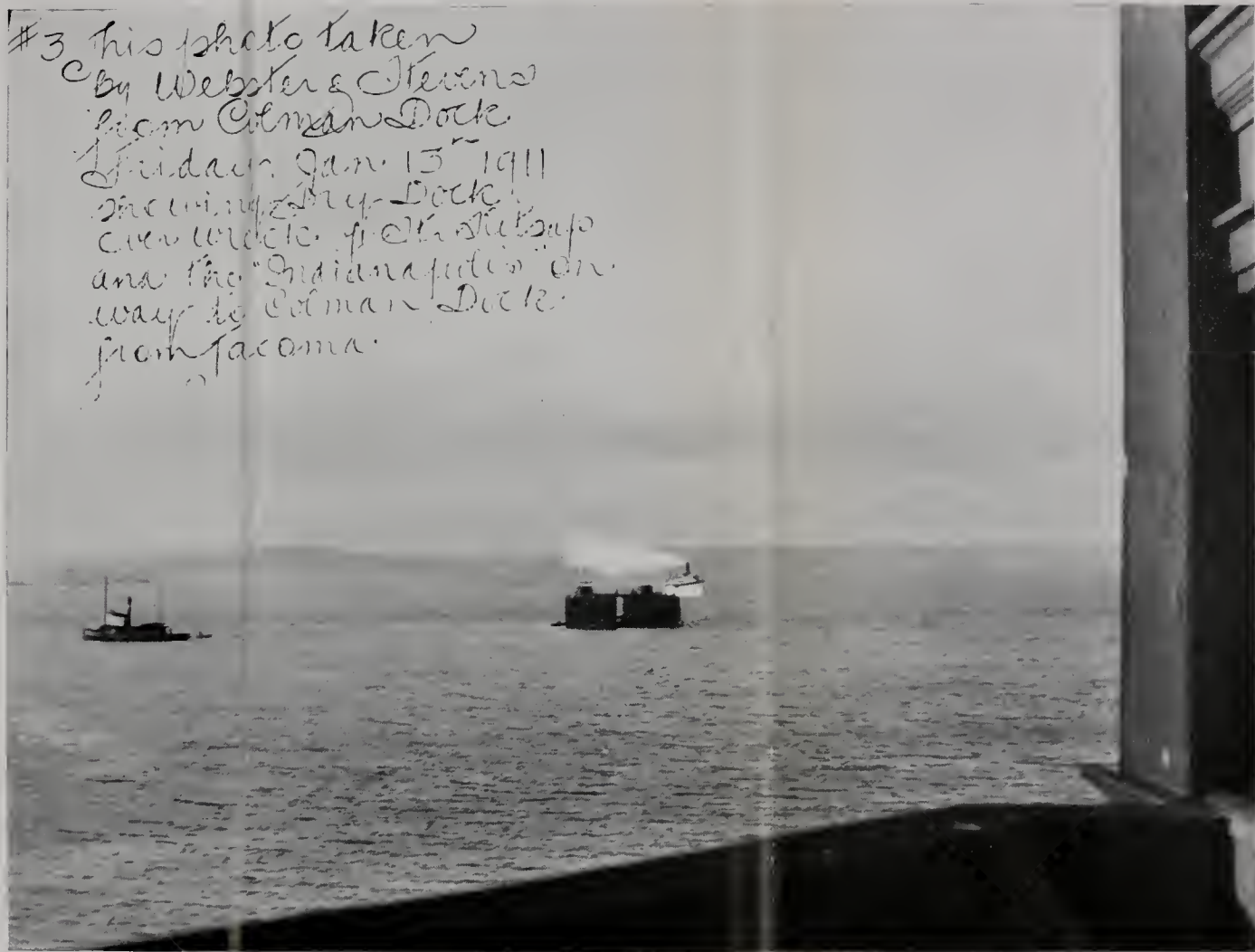
Filed in the
U. S. District Court,
Western Dist. of Washington,

Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.

#3 This photo taken
by Webster & Stevens
from Colman Dock.
Friday, Jan. 13th 1911
showing Dry Dock
cruiser, the "Hibara"
and the "Indianapolis" en
route to Colman Dock
from Tacoma.



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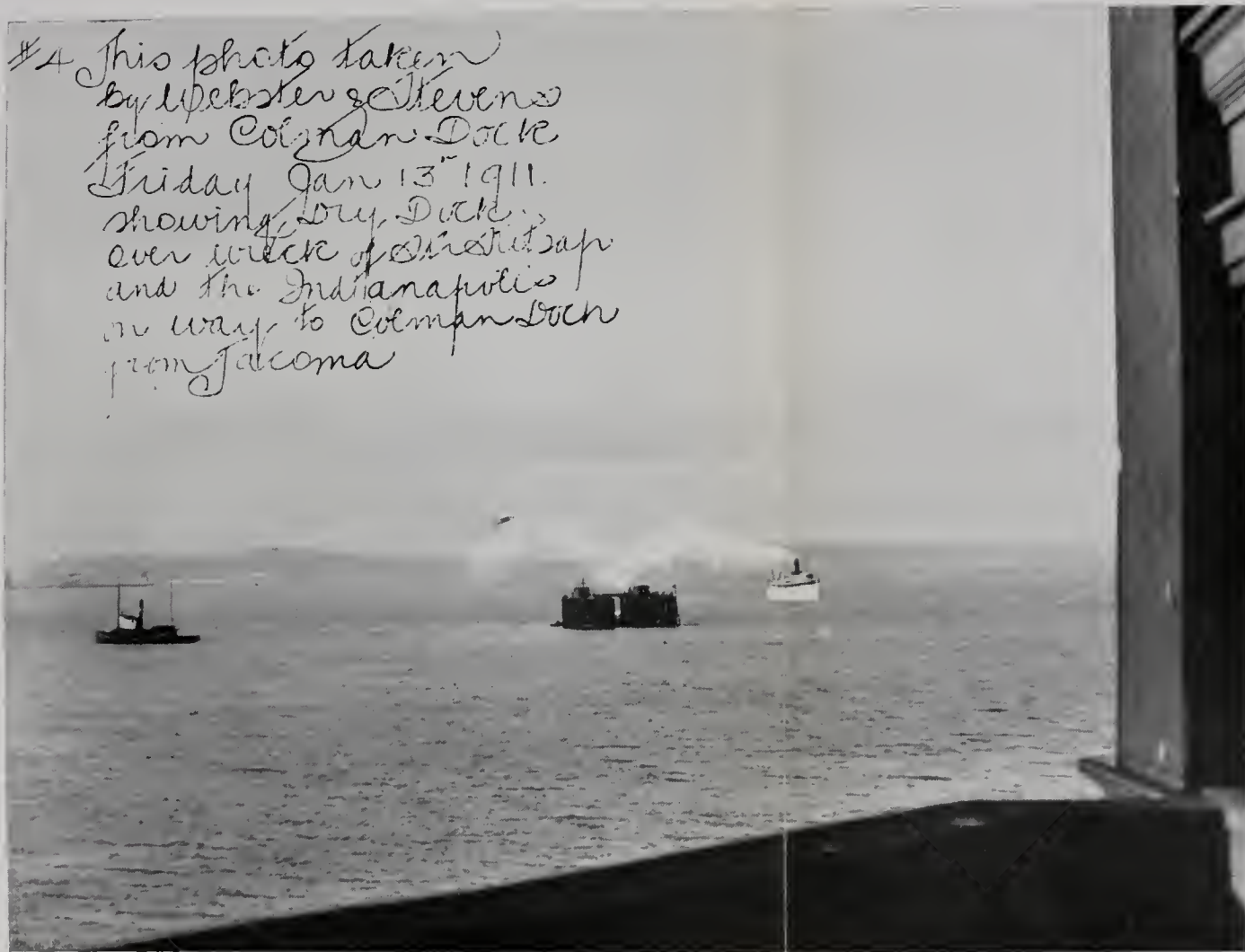
Filed in the
U. S. District Court,
Western Dist. of Washington,

Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.

#4 This photo taken
by Webster Stevens
from Colman Dock
Friday Jan 13 1911.
showing Dry Dock,
over wreck of Shishisap
and the Indianapolis
on way to Colman Dock
from Tacoma



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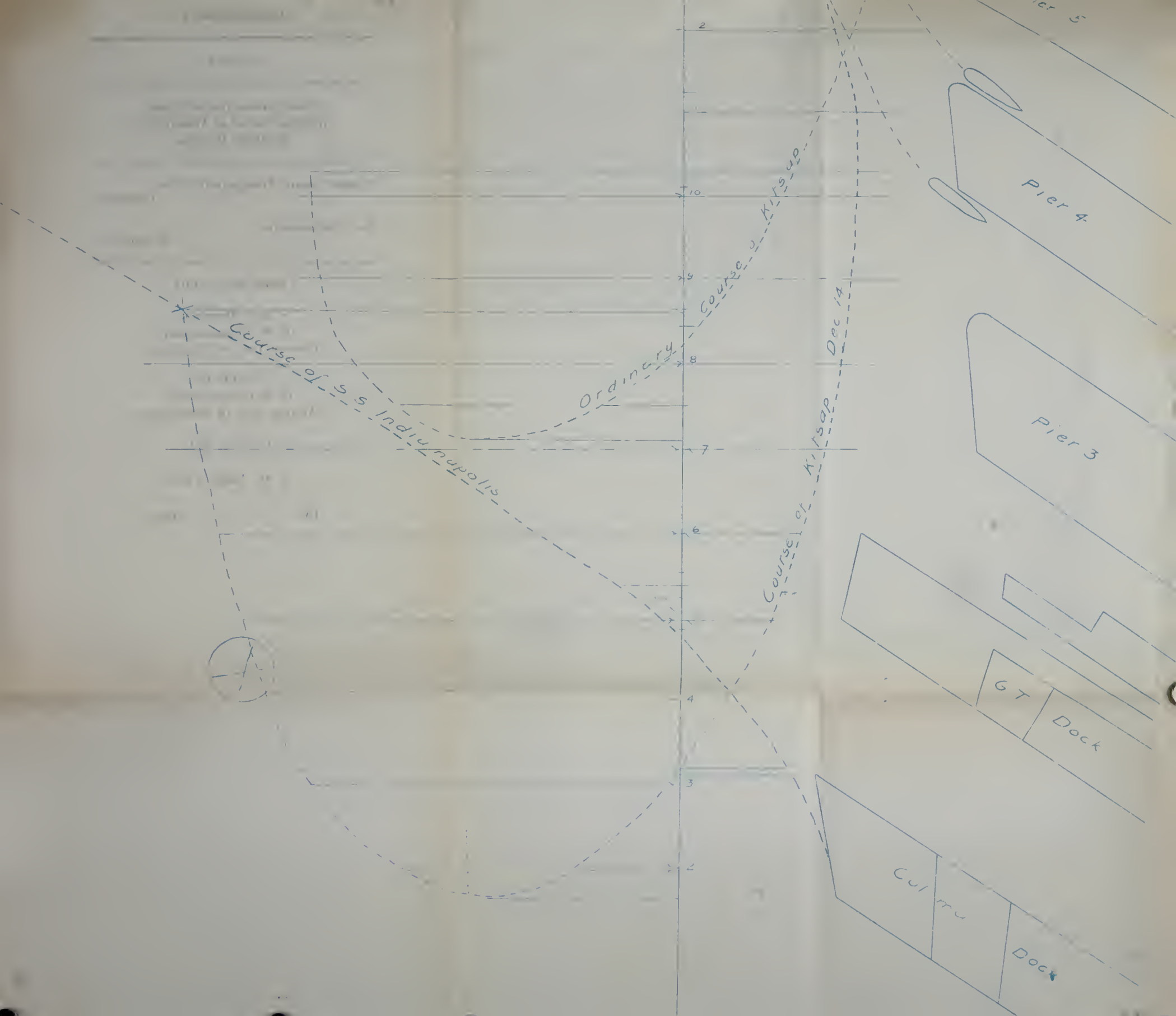
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U. S. Commissioner,
Western Dist. of Washington.

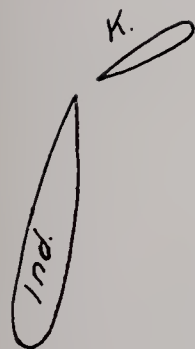
Filed in the
U. S. District Court,
Western Dist. of Washington,

Oct. 21, 1911.

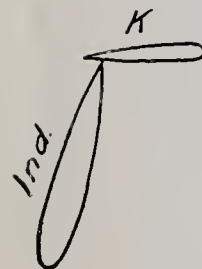
A. W. Engle, Clerk.

By.....Deputy.

I.



II.



III.



No. 4484.

United States District Court,
Western District of Washington,
Northern Division.

Kitsap County Transportation Co.,
Libellant,
v.
Str. "Indianapolis,"
Respondent.

Filed July 10, 1911.

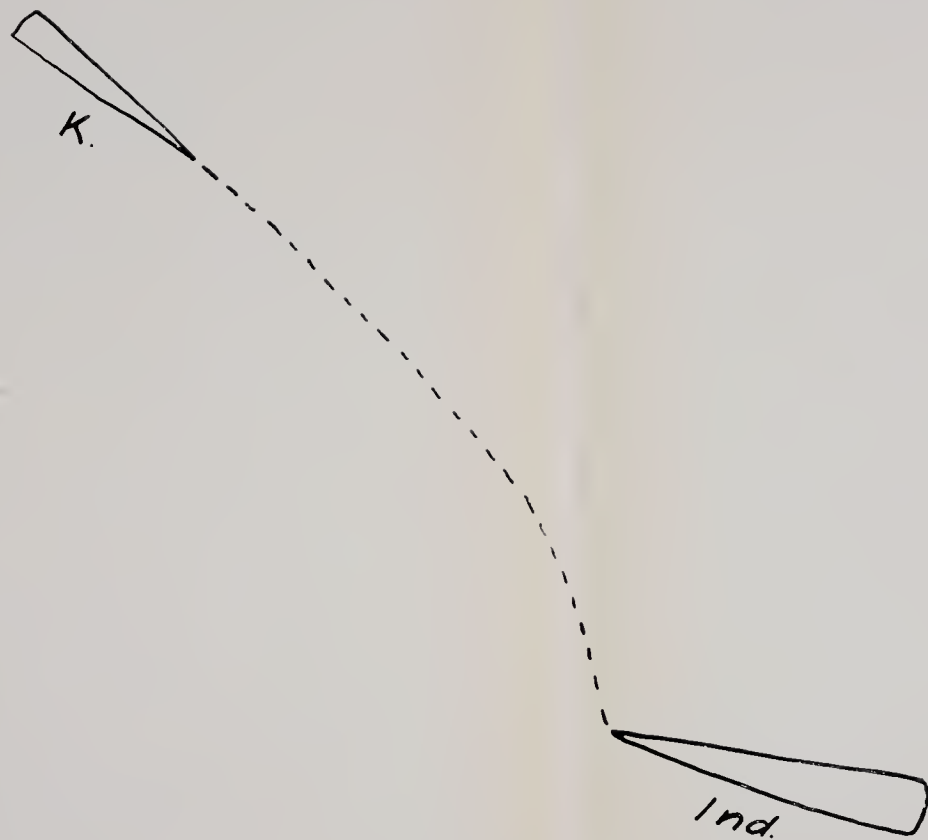
A. C. Bowman,
U. S. Commissioner,
Western Dist. of Washington.

Filed in the
U. S. District Court,
Western Dist. of Washington,

Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.



No. 4484.

United States District Court,
Western District of Washington,
Northern Division.

Kitsap County Transportation Co.,
Libellant,
v.
Str. "Indianapolis,"
Respondent.

Filed July 10, 1911.

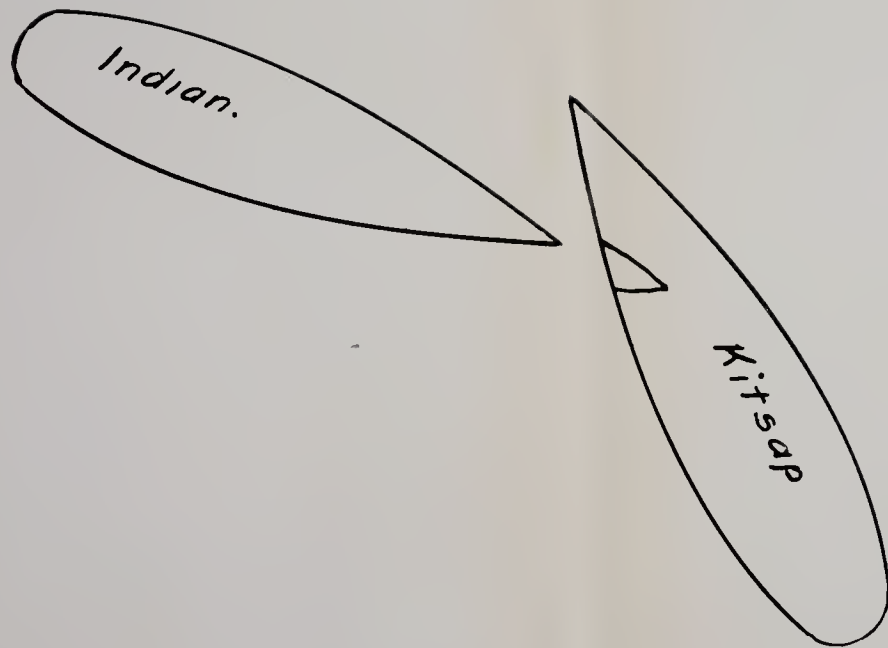
A. C. Bowman,
U. S. Commissioner,
Western Dist. of Washington.

Filed in the
U. S. District Court,
Western Dist. of Washington,

Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.



No. 4484.

United States District Court,
Western District of Washington,
Northern Division.

Kitsap County Transportation Co.,
Libellant,
v.
Str. "Indianapolis,"
Respondent.

Filed July 10, 1911.

A. C. Bowman,
U. S. Commissioner,
Western Dist. of Washington.

Filed in the
U. S. District Court,
Western Dist. of Washington,

Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.

No. 4484.

United States District Court,
Western District of Washington,
Northern Division.

Kitsap County Transportation Co.,
Libellant,
v.
Str. "Indianapolis,"
Respondent.

Filed July 12, 1911.

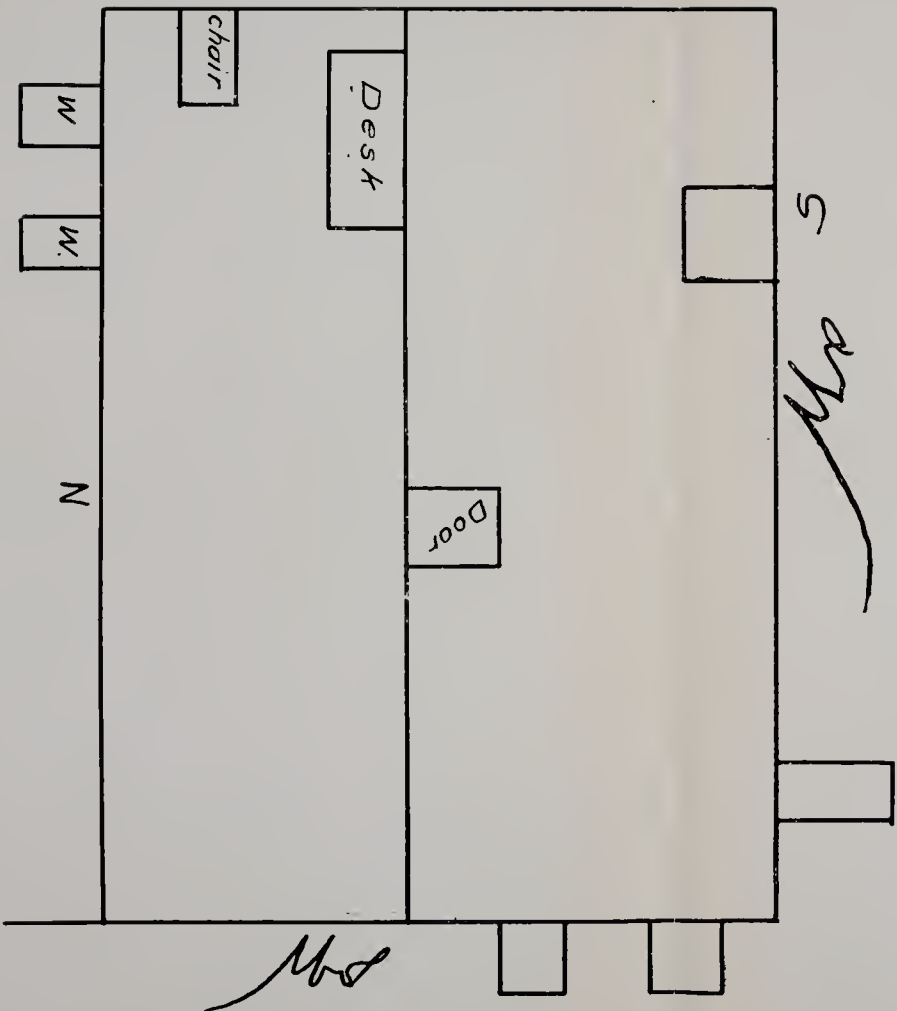
A. C. Bowman,
U. S. Commissioner,
Western Dist. of Washington.

Filed in the
U. S. District Court,
Western Dist. of Washington,

Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.



Claimant's Ex. 14

No. 4484.

United States District Court,
Western District of Washington,
Northern Division.

Kitsap County Transportation Co.,
Libellant,
v.
Str. "Indianapolis,"
Respondent.

Filed Sept. 1, 1911.

A. C. Bowman,
U. S. Commissioner,
Western Dist. of Washington.

Filed in the
U. S. District Court,
Western Dist. of Washington,

Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.

Culman

G T P

Circle 100' off G T P Dock

Circle 200' off G T P Dock

Pier A

Southerly side R P Ave

Scale 200' = 1"

No. 4484.

United States District Court,
Western District of Washington,
Northern Division.

Kitsap County Transportation Co.,
Libellant,
v.
Str. "Indianapolis,"
Respondent.

Filed Oct. 13, 1911.

A. C. Bowman,
U. S. Commissioner,
Western Dist. of Washington.

Filed in the
U. S. District Court,
Western Dist. of Washington,

Oct. 21, 1911.

A. W. Engle, Clerk.

By.....Deputy.

*In the United States District Court, for the Western District
of Washington, Northern Division. In Admiralty.*

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,

Libelant,

vs.

The Steamship "INDIANAPOLIS,"
her engines, boilers, tackle, apparel
and furniture,

Respondent,

INTERNATIONAL STEAMSHIP
COMPANY, a corporation,

Claimant and Cross-Libelant.

No. 4484.

NOTICE OF FILING FINAL DECREE.

*To the INTERNATIONAL STEAMSHIP COMPANY, a cor-
poration, and to IRA BRONSON, its proctor herein:*

You and each of you will hereby take notice that the final
decree of the said Court in the above entitled action was made
and filed therein on the 15th day of August, 1912.

Dated at Seattle, Washington, August 15th, 1912.

BOGLE, GRAVES, MERRITT & BOGLE.

Proctors for Libelant.

Service of within Notice this 15th day of August, 1912,
and receipt of a copy thereof, admitted.

IRA BRONSON,

Proctor for Claimant and Cross-Libelant.

Endorsed: NOTICE OF FILING FINAL DECREE.
Filed in the U. S. District Court, Western Dist. of Washington.
Aug. 15, 1912. A. W. Engle, Clerk. By F. A. Simpkins,
Deputy.

*In the United States District Court, for the Western District
of Washington, Northern Division. In Admiralty.*

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,

Libelant,

vs.

The Steamship "INDIANAPOLIS",
her engines, boilers, tackle, apparel
and furniture,

Respondent.

No. 4484.

INTERNATIONAL STEAMSHIP
COMPANY, a corporation,

Claimant and Cross-Libelant.

FINAL DECREE.

This cause having been heretofore heard by Honorable C. H. HANFORD, one of the Judges of said Court, upon the pleadings and proof; and having been argued and submitted by the proctors of the respective parties; and said Court having taken said cause under advisement, and having thereafter on the 28th day of May, 1912, made and filed its memorandum decision on the merits in said cause. And the said Judge by whom said cause was heard and who rendered said decision having thereafter and heretofore resigned as such Judge of said Court. And the said Court having found in said memorandum decision, and it does hereby find that the collision mentioned in the pleadings herein resulted from the mutual fault of said steamship "Kitsap" owned by the libelant, Kitsap County Transportation Company, a corporation, and the said steamship "Indianapolis" owned by the claimant and cross-libelant, International Steamship Company, a corporation, and that there should be a division of damages resulting from said collision.

And the said Court having also found, and it does hereby find that the damages resulting to the libelant from said col-

lision amount to the sums following to-wit: For damage to the said steamer "Kitsap" the sum of Twenty-five Thousand Seven Hundred Sixteen and $87/100$ Dollars (\$25,716.87) and for demurrage for said steamer "Kitsap" the sum of Six Thousand Nine Hundred Fifty Dollars (\$6,950.00), the whole amounting to Thirty-two Thousand Six Hundred Sixty-six and $87/100$ Dollars (\$32,666.87). And that the damages sustained by the claimant and cross libelant by reason of said collision amount to the sum of Three Thousand Nine Hundred Ninety-six and $35/100$ Dollars (\$3,996.35), damages to said steamship "Indianapolis," and the sum of One Thousand Four Hundred Fifty-five and $15/100$ Dollars (\$1,455.15) for demurrage for said steamship "Indianapolis," the whole amounting to Five Thousand Four Hundred Fifty-one and $50/100$ Dollars (\$5,451.40). And said court having also found that on a division of such total damage, said libelant is entitled to recover judgment for Thirteen Thousand Six Hundred Eight and $18/100$ Dollars (\$13,608.18), which sum through error in computation is fifty cents (.50) more than it should have been, and the Court now finds the correct amount to be Thirteen Thousand Six Hundred Seven and $68/100$ Dollars (\$13,607.68), and said Court having also found, and it now finds that neither party hereto is entitled to recover costs in this suit,

NOW THEREFORE, It is hereby ORDERED, ADJUDGED and DECREED, that the libelant, Kitsap County Transportation Company, a corporation, have and recover of and from the International Steamship Company, a corporation, claimant and cross-libelant herein, and of and from Joshua Green and Charles E. Peabody, sureties on the stipulation filed herein for the release of said vessel the said sum of Thirteen Thousand Six Hundred Seven and $68/100$ Dollars (\$13,607.68) with interest thereon from the date hereof at the rate of six per cent per annum, but without costs.

And it is further hereby ORDERED that, unless an appeal be taken from the decree within the time limited by the rules and practice of this Court, the said International Steamship Company, claimant herein, and the said Joshua Green and Charles E. Peabody, the stipulators on the release bond

of said steamship "Indianapolis," given herein, do cause the engagement of their said stipulation to be performed, or show cause within the time provided by law and the rules of this Court, or on the first day of jurisdiction thereafter, why execution should not issue against them, their lands, goods, and chattels, for the amount of this decree, according to their said stipulation.

ORDERED and DECREED this 15th day of August, 1912.

EDWARD E. CUSHMAN,
United States District Judge.

Approved as to form:

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for Libelant.
IRA BRONSON,
Proctor for Claimant and Cross-Libelant.

Endorsed: FINAL DECREE. Filed in the U. S. District Court, Western Dist. of Washington. Aug. 15, 1912. A. W. Engle, Clerk. By F. A. Simpkins, Deputy.

In the United States District Court, for the Western District of Washington, Northern Division. In Admiralty.

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,
Libelant,

vs.

The Steamship "INDIANAPOLIS",
her engines, boilers, tackle, apparel
and furniture,
Respondent,

INTERNATIONAL STEAMSHIP
COMPANY, a corporation,
Claimant and Cross-Libelant.

No. 4484.

NOTICE OF APPEAL.

To INTERNATIONAL STEAMSHIP COMPANY, a corporation, Claimant and Cross-Libelant herein; and to

JOSHUA GREEN and CHARLES E. PEABODY, Stipulators for the release of the Steamship "INDIANAPOLIS"; and to

IRA BRONSON, Proctor for Respondent and said Claimant and Cross-Libelant; and to

A. W. ENGLE, Clerk of said Court:

You and each of you will please take notice that the Kitsap County Transportation Company, a corporation, libelant herein, hereby appeals from the final decree made and entered herein on the 15th day of August, 1912, in favor of said libelant and against said Claimant and Cross-Libelant, and said stipulators on said bond, for the sum of Thirteen Thousand Six Hundred Seven and 68/100 Dollars (\$13,607.68), without costs, and from each and every part of said decree, to the next United States Circuit of Appeals, for the Ninth Circuit, to be holden in and for said Circuit at the City of San Francisco, State of California.

Dated at Seattle, Washington, August 15th, 1912.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for Libelant.

Due service of the foregoing notice of appeal, after the filing of the same in the office of the Clerk of the above entitled Court, is hereby admitted by the proctor for claimant and cross-libelant, this 15th day of August, 1912.

IRA BRONSON,
Proctor for Claimant and Cross-Libelant.

Endorsed: NOTICE OF APPEAL. Filed in the U. S. District Court, Western Dist. of Washington. Aug. 15, 1912. A. W. Engle, Clerk. By F. A. Simpkins, Deputy.

*In the United States District Court, for the Western District
of Washington, Northern Division. In Admiralty.*

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,

Libelant,

vs.

The Steamship "INDIANAPOLIS",
her engines, boilers, tackle, apparel
and furniture,

Respondent,

INTERNATIONAL STEAMSHIP
COMPANY, a corporation,

Claimant and Cross-Libelant.

No. 4484.

PETITION FOR APPEAL.

To the Honorable Judge of said Court:

The Kitsap County Transportation Company, a corporation, libelant herein, respectfully shows, that on or about the 6th day of January, 1911, it exhibited its libel in the District Court of the United States, for the Western District of Washington, Northern Division, sitting at Seattle, against the said steamship "Indianapolis", her engines, boilers, tackle, apparel and furniture, in an action civil and maritime, for damages for collision between the steamship "Kitsap", owned by said libelant, and the said steamship "Indianapolis", owned by the International Steamship Company, a corporation, claimant and cross-libelant herein, and praying, among other things, for the relief set forth in said libel that said steamship "Indianapolis" be condemned to pay the demand of said libelant and costs in said libel mentioned.

That process issued out of said Court having been served on said steamship "Indianapolis", the said International Steamship Company, as owner and claimant, did thereafter file its answer to the said libel in the said District Court, and also file its cross-libel against the said steamship "Kitsap"

owned by the said Kitsap County Transportation Company, in which answer and cross-libel said claimant and cross-libelant prayed that the said original libel be dismissed with costs, and that the said steamship "Kitsap", her engines, boilers, tackle, apparel and furniture, be condemned to pay the demands of said cross-libelant and the costs upon said cross-libel, as by reference to said libel, answer, and cross-libel will more fully appear.

That the said cause came on to be heard before the said Honorable C. H. Hanford, one of the Judges of said District Court, on or about the 8th day of November, 1911, upon the pleadings and proof taken in said cause by the respective parties. And the said Judge on or about the 28th day of May, 1912, made and filed a memorandum decision on the merits on said cause whereby it was, among other things, found and decreed that the collision mentioned in the pleadings resulted from the mutual fault of said steamship "Kitsap" owned by the said libelant, and the steamship "Indianapolis" owned by the said cross-libelant, and that there should be a division of damages resulting from said collision, and that the damages sustained by said steamship "Kitsap" resulting from said collision amounted to the total sum of Thirty-two Thousand Six Hundred Sixty-six and 87/100 Dollars (\$32,666.87), and that the damages to said "Indianapolis" resulting from said collision amounted to the total sum of Five Thousand Four Hundred Fifty-one and 50/100 Dollars (\$5,451.50), and that on a division of said damages, the said claimant and cross-libelant should pay to said libelant the sum of Thirteen Thousand Six Hundred Seven and 68/100 Dollars (\$13,607.68), but that neither party to said action should be entitled to recover costs therein, and no interest should be allowed either party.

And it was further found by said Court that the said libelant as a part of said damage was entitled to damages in the nature of demurrage for a period of one hundred thirty-nine (139) days consumed in making temporary and permanent repairs to said steamship "Kitsap" as a result of said collision, said damages in the nature of demurrage being fixed at the rate of Fifty Dollars (\$50.00) per day, but said Court refused to allow as a part of such expense or damage to said

steamship "Kitsap" the sum of Fifteen Hundred Dollars (\$1,500.00) for depreciation in the value of the boilers of said steamship "Kitsap" by being submerged in salt water.

And after the making and filing of said memorandum decision, and before the entry of final judgment in said cause, the said C. H. Hanford having resigned as one of the Judges of the above entitled Court, Thereafter and on the 15th day of August, 1912, a final decree in said cause was made and entered by the Honorable E. E. Cushman, one of the Judges of said Court, in accordance with said memorandum decision.

And this appellant is advised and insists that said decree is erroneous, inasmuch as the said collision did not result from the mutual fault of said steamship "Kitsap" and the said steamship "Indianapolis," but did result from the sole fault of said steamship "Indianapolis", and also inasmuch as the said Court refused to allow to the said appellant the full amount of the damage sustained by it as a result of said collision, and refused to allow appellant demurrage for the said steamship "Kitsap" for the said one hundred thirty-nine (139) days at the rate of One Hundred Three Dollars (\$103.00) per day instead of the said sum of Fifty Dollars (\$50.00), and refused to allow the said item of Fifteen Hundred Dollars (\$1500.00) damages for depreciation in the value of the boilers of said steamship "Kitsap", and also for the reason that said Court found and decreed that this petitioner should pay one-half of the damage found to have been sustained by said steamship "Indianapolis" as a result of said collision, and also refused to allow your petitioner its costs in said suit, but decreed that neither party should recover costs herein.

And this appellant for this and other reasons appeals from the whole of said decree to the United States Circuit Court of Appeals to be held in the City of San Francisco, California, for the Ninth Circuit, and prays that the said decree may be modified and corrected, and that the said appellant may have a decree against the said claimant and cross-libelant, and the stipulators for the release of said vessel filed herein, for the full amount of the damage sustained by said appellant and resulting from said collision, or such other

decree made as to the said United States Circuit Court of Appeals may seem just, and that the said appellee and said stipulators be condemned to pay to the appellant its costs and damages in the premises.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for Libelant and Appellant.

Service of within Petition this 15th day of August, 1912, and receipt of a copy thereof, admitted.

IRA BRONSON,
Proctor for Claimant and Cross-Libelant.

Endorsed: PETITION FOR APPEAL. Filed in the U. S. District Court, Western Dist. of Washington. Aug. 15, 1912. A. W. Engle, Clerk. By F. A. Simpkins, Deputy.

In the United States District Court, for the Western District of Washington, Northern Division. In Admiralty.

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,
Libelant,

vs.

The Steamship "INDIANAPOLIS",
her engines, boilers, tackle, apparel
and furniture,
Respondent,

INTERNATIONAL STEAMSHIP
COMPANY, a corporation,
Claimant and Cross-Libelant.

No. 4484.

ORDER ALLOWING APPEAL AND FIXING SUPERSEDEAS BOND.

This cause having come on to be heard on this 15th day of August, 1912, upon the petition of the Kitsap County

Transportation Company, libelant in the above entitled cause, for an appeal from the decree of this Court made and entered on the 15th day of August, 1912, wherein and whereby it was decreed that the collision mentioned in the pleadings herein resulted from the mutual fault of the steamship "Kitsap" and the steamship "Indianapolis", and that the damage resulting therefrom should be divided, and upon such division decreeing that the said Kitsap County Transportation Company should have and recover from said claimant and cross-libelant and the stipulators upon the release bond given herein, the sum of Thirteen Thousand Six Hundred Seven and 68/100 Dollars (\$13,607.68) and that neither party should recover costs in said action; and it appearing from said petition for an appeal that said decree has been duly filed with the Clerk of this Court, and the Court being fully and duly advised in the premises,

IT IS HEREBY ORDERED AND DECREED that the said Kitsap County Transportation Company be, and hereby is, allowed an appeal from said decree as aforesaid, and that the appeal bond to be given on said appeal be fixed at the sum of Three Hundred Dollars, which sum shall operate as a supersedeas in said cause.

EDWARD E. CUSHMAN,
United States District Judge.
O. K.

IRA BRONSON,
Proctor for Claimant and Cross-Libelant.

Endorsed: ORDER ALLOWING APPEAL AND FIXING SUPERSEDEAS BOND. Filed in the U. S. District Court, Western Dist. of Washington. Aug. 15, 1912. A. W. Engle, Clerk. By F. A. Simpkins, Deputy.

*In the United States District Court, for the Western District
of Washington, Northern Division. In Admiralty.*

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,

Libelant,

vs.

The Steamship "INDIANAPOLIS",
her engines, boilers, tackle, apparel
and furniture,

Respondent,

INTERNATIONAL STEAMSHIP
COMPANY, a corporation,

Claimant and Cross-Libelant.

No. 4484.

ASSIGNMENT OF ERRORS.

Comes now the above named Kitsap County Transportation Company, a corporation, libelant in the above entitled cause, and says that in the record and proceeding in said cause, and in the decree made and entered therein on the 15th day of August, 1912, there are manifest errors in the following particulars:

I.

That the Court erred in finding and decreeing that the collision mentioned in the pleadings between the steamship "Kitsap" and the steamship "Indianapolis", resulted from the mutual fault of said steamship "Kitsap" and said steamship "Indianapolis", and in refusing to find and decree that said collision resulted from the sole fault and negligence of the said steamship "Indianapolis".

II.

That the Court erred in finding and decreeing in said cause that the damage resulting from the collision mentioned in the pleadings should be divided, and that said libelant should recover only one-half of the damage sustained by it

and resulting from said collision, and that said libelant should pay to the said International Steamship Company, claimant and cross-libelant herein, one-half of the damages of said steamship "Indianapolis" found to have resulted from said collision.

III.

That the Court erred in finding the amount of damage in the nature of demurrage, to which said libelant was entitled, at the sum of Fifty Dollars (\$50.00) per day during the one hundred thirty-nine (139) days of detention of the steamship "Kitsap" resulting from said collision, and in refusing to award to said libelant damages in the nature of demurrage for the said detention at a higher rate or greater sum than Fifty Dollars (\$50.00) per day.

IV.

That the Court erred in refusing to allow and award to said libelant, as a part of the damages sustained by it as a result of said collision any amount or sum for depreciation in the value of the boilers of said steamship "Kitsap" due to a submersion of said boilers, resulting from said collision.

V.

That the Court erred in refusing to allow the libelant any interest upon the sums expended by it for the repairs upon said steamship "Kitsap" resulting from said collision, and in refusing to allow any interest prior to the date of said decree upon the amounts due to said libelant from said claimant and cross-libelant as damages resulting from said collision.

VI.

That the Court erred in refusing to allow, award and decree to libelant the full amount of damages sustained by it as a result of the collision between the said steamship "Kitsap" and the said steamship "Indianapolis" together with interest thereon and its costs upon said suit as prayed for in its said libel.

VII.

That the Court erred in refusing to dismiss the cross-

libel filed by said International Steamship Company in said cause.

WHEREFORE, the libelant and appellant herein prays that the said decree may be reversed, modified and corrected in the particulars herein above set out, and such decree entered therein as ought to have been entered by the said District Court.

BOGLE, GRAVES, MERRITT & BOGLE,
Proctors for Libelant and Appellant,
KITSAP COUNTY TRANSPORTATION COMPANY.

Service of within Assignment of Errors this 15th day of August, 1912, and receipt of a copy thereof admitted.

IRA BRONSON,
Proctor for Claimant and Cross-Libelant.

Endorsed: ASSIGNMENT OF ERRORS. Filed in the U. S. District Court, Western District of Washington. Aug. 15, 1912. A. W. Engle, Clerk. By F. A. Simpkins, Deputy.

In the United States District Court, for the Western District of Washington, Northern Division. In Admiralty.

KITSAP COUNTY TRANSPORTATION COMPANY, a corporation,
Libelant,

vs.

The Steamship "INDIANAPOLIS",
her engines, boilers, tackle, apparel
and furniture,
Respondent.

No. 4484.

INTERNATIONAL STEAMSHIP
COMPANY, a corporation,
Claimant and Cross-Libelant.

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:

That we, KITSAP COUNTY TRANSPORTATION COMPANY, a corporation, as principal, and M. W. Peterson,

as surety, are held and firmly bound unto the INTERNATIONAL STEAMSHIP COMPANY, a corporation, in the sum of Three Hundred Dollars, lawful money of the United States to be paid to said INTERNATIONAL STEAMSHIP COMPANY, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents.

Sealed with our seals and dated at Seattle this 15th day of August, 1912.

WHEREAS, the said Kitsap County Transportation Company, a corporation, has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the decree made and entered in the above entitled Court on the 15th day of August, 1912, and having duly filed its Assignments of Errors in the office of the Clerk of said Court, and having filed its Petition for such appeal which was duly allowed by said Court, and a citation was duly issued in said cause on such appeal,

NOW THEREFORE, the condition of this obligation is such that if the above named Kitsap County Transportation Company, appellant in said cause, shall prosecute said appeal with effect and pay all costs which may be awarded against it as such appellant, if the appeal is not sustained, and shall abide by, fulfill and perform whatever judgment and decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit, in this cause, or on the mandate of said Court by the Court below, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

KITSAP COUNTY TRANSPORTATION CO.

By M. W. PETERSON,

Its Treasurer.

M. W. PETERSON. (Seal)

Sealed and delivered, and taken and acknowledged this 15th day of August, 1912, before me.

(Notarial Seal)

F. T. MERRITT,

Notary Public in and for the State of
Washington, residing at Seattle.

United States of America,
Western District of Washington—ss.

M. W. Peterson, being duly sworn, deposes and says:
That he resides in the Western District of Washington; that
he is worth the sum of Six Hundred Dollars (\$600.00) over
and above all of his just debts and liabilities.

M. W. PETERSON.

Sworn to this 15th day of August, 1912, before me.

(Notarial Seal)

F. T. MERRITT,
Notary Public in and for the State of
Washington, residing at Seattle.

The foregoing bond approved as to form, amount and
sufficiency of surety.

IRA BRONSON,
Proctor for INTERNATIONAL
STEAMSHIP COMPANY, Appellee.

The foregoing bond and the sufficiency of the surety there-
on is on this 15th day of August, 1912, approved as an appeal
and supersedeas bond by the undersigned.

EDWARD E. CUSHMAN,
United States District Judge.

Endorsed: BOND ON APPEAL. Filed in the U. S. Dis-
trict Court, Western Dist. of Washington. Aug. 15, 1912. A.
W. Engle, Clerk. By F. A. Simpkins, Deputy.

*In the United States District Court, for the Western District
of Washington, Northern Division. In Admiralty.*

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,

Libelant,

vs.

The Steamship "INDIANAPOLIS",
her engines, boilers, tackle, apparel
and furniture,

Respondent,

INTERNATIONAL STEAMSHIP
COMPANY, a corporation,

Claimant and Cross-Libelant.

No. 4484.

ORDER DIRECTING TRANSMISSION OF ORIGINAL EXHIBITS ON APPEAL.

Now on this 15th day of August, 1912, upon application of Messrs. Bogle, Graves, Merritt & Bogle, proctors for libelant, and appellant herein, and for sufficient cause appearing,

IT IS ORDERED that the Clerk of this Court certify and transmit to the United States Circuit Court of Appeals for the Ninth Circuit, the original exhibits used and introduced in evidence upon the trial and hearing of this cause, there to be inspected and considered, together with the transcript of the record on appeal from this cause.

EDWARD E. CUSHMAN,
United States District Judge.

Approved:

IRA BRONSON.

Endorsed: ORDER DIRECTING TRANSMISSION OF
ORIGINAL EXHIBITS ON APPEAL. Filed in the U. S.
District Court, Western Dist. of Washington. Aug. 15, 1912.
A. W. Engle, Clerk. By F. A. Simpkins, Deputy.

*In the United States District Court, for the Western District
of Washington, Northern Division. In Admiralty.*

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,

Libelant,

vs.

The Steamship "INDIANAPOLIS",
her engines, boilers, tackle, apparel
and furniture,

Respondent,

INTERNATIONAL STEAMSHIP
COMPANY, a corporation,

Claimant and Cross-Libelant.

No. 4484.

PRAECIPE FOR APOSTLES ON APPEAL.

To the Clerk of the above entitled Court:

You will please prepare, certify, print and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, the Apostles on Appeal in the above entitled cause, pursuant to the rules of said Circuit Court of Appeals; and please include in such Apostles the following:

1. A caption exhibiting the proper style of the Court and the title of the cause.

2. A statement showing the time of the commencement of the suit; the names of the parties; the several dates when the respective pleadings were filed; the time when the trial was had, and the name of the Judge hearing the same; showing that said cause was referred to a commissioner to take and report the evidence; the date of the entry of the Final Decree, and the date when Notice of Appeal was filed.

3. All the pleadings with the exhibits annexed thereto, including in such pleadings the following:

The Libel of the Kitsap County Transportation Company, filed January 6, 1911;

The Cross-Libel of International Steamship Company,
Claimant and Cross-Libelant, filed February 7, 1911;

Answer to Cross-Libel, filed March 1, 1911;

Claimant's Answer to Libel, filed April 29, 1911.

4. All the testimony taken in the cause and all exhibits offered in evidence, said testimony and exhibits having been filed October 20, 1911; Libelant's exhibits being from "A" to "S" inclusive, and Claimant's exhibits being from "1" to "15" inclusive.

5. Memorandum Decision, filed May 28, 1912.

6. The Final Decree made and filed August 15, 1912.

7. Notice of appeal with admission of services thereof, filed August 15, 1912.

8. Petition for Appeal with admission of service thereof, filed August 15, 1912.

9. Order allowing Appeal and fixing Supersedeas Bond, filed August 15, 1912.

10. Assignment of Errors, with admission of service thereof, filed August 15, 1912.

11. Bond on Appeal, filed August 15, 1912.

12. Citation on Appeal, filed August 15, 1912.

13. Order transmitting original exhibits, filed August 15, 1912.

14. This Praecipe, filed August 15, 1912.

BOGLE, GRAVES, MERRITT & BOGLE,

Proctors for Libelant.

Endorsed: PRAECIPE FOR APOSTLES ON APPEAL. Filed in the U. S. District Court, Western Dist. of Washington. Aug. 15, 1912. A. W. Engle, Clerk. By F. A. Simpkins, Deputy.

*In the District Court of the United States for the Western
District of Washington, Northern Division.*

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,
Libelant and Appellant,

vs.

The STEAMSHIP "INDIAN-
APOLIS," her engines, boilers,
tackle, apparel and furniture,
Respondent and Appellee,

INTERNATIONAL STEAMSHIP
COMPANY, a corporation,
Claimant and Cross-Libelant.

No. 4484.

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington—ss.

I, FRANK L. CROSBY, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify the foregoing 455 printed pages, numbered from 1 to 455, inclusive, to be a full, true and correct copy of the record and proceedings in the above and foregoing entitled cause, as is called for by praecipe of Proctors for Libelant, as the same remain of record and on file in the office of the Clerk of said Court, and that the same, together with the original exhibits, separately certified, constitute the Apostles on Appeal from the order, judgment and decree of the District Court of the United States for the Western District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit at San Francisco, California.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

I further certify that the cost of preparing and certifying the foregoing apostles on appeal is the sum of One Thousand

One Hundred and Seventy Dollars and Fifty-five Cents (\$1,170.55), and that the said sum has been paid to me by Messrs. Bogle, Graves, Merritt and Bogle, Proctors for Libelant and Appellant.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Seattle, in said District, this third day of September, 1912.

(Seal)

FRANK L. CROSBY,
Clerk.

By F. A. SIMPKINS,
Deputy.

*In the United States District Court, for the Western District
of Washington, Northern Division. In Admiralty.*

KITSAP COUNTY TRANSPORTA-
TION COMPANY, a corporation,
Libelant,

vs.

The Steamship "INDIANAPOLIS",
her engines, boilers, tackle, apparel
and furniture,

Respondent,

INTERNATIONAL STEAMSHIP
COMPANY, a corporation,

Claimant and Cross-Libelant.

No. 4484.

CITATION ON APPEAL.

The President of the United States to International Steamship Company, a corporation, Claimant and Cross-Libelant herein, and Ira Bronson, its proctor herein, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the

Ninth Circuit, at the City of San Francisco, California, within thirty (30) days from the date hereof, pursuant to an appeal to the said Court duly filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein the said Kitsap County Transportation Company, a corporation, is appellant, and you are appellee, then and there to show cause, if any there be, why the decree of the District Court of the United States for the Western District of Washington, Northern Division, in the above entitled cause, dated August 15th, 1912, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States of America, this 15th day of August, 1912.

(SEAL)

EDWARD E. CUSHMAN,
Judge of the United States District Court
for the Western District of Washington.

Due service of the within citation after the filing of the same, in the office of the Clerk of the above entitled Court is hereby admitted this 15th day of August, 1912.

IRA BRONSON,
Proctor for Claimant and Cross-Libelant, and Appellee.

Endorsed: CITATION ON APPEAL. Filed in the U. S. District Court. Western Dist. of Washington. Aug. 15, 1912. A. W. Engle, Clerk. By F. A. Simpkins, Deputy.